

<b>Agenda Item</b>	<b>5</b>
<b>Report No</b>	<b>ECI/1/22</b>

## HIGHLAND COUNCIL

**Committee:** Economy and Infrastructure

**Date:** 2 February 2022

**Report Title:** School Transport Transformation Project  
(Review of School Transport)

**Report By:** Executive Chief Officer Infrastructure, Environment & Economy

### 1. Purpose/Executive Summary

- 1.1. At their meeting on 2 December 2021, the Economy and Infrastructure Committee considered a summary report from TAS Partnership on school transport and approved several recommendations for the development of the school transport function. The final report from TAS is now received and is attached.
- 1.2. The Committee also agreed to invite TAS to give a presentation on their work on this project, which has been arranged for this meeting.

### 2. Recommendations

- 2.1. Members are asked to note the full summary report from The TAS Partnership (attached as an **Appendix 1**).

### 3. Implications

- 3.1. **Resource** - The report identifies areas for potential cost saving over time. Some elements will require initial outlay in order to achieve continuing savings. Factors leading to upward cost pressures on transport provision are also identified. There will be a one-off resource requirement to procure a contract management system. Dedicated staffing resources will be necessary to develop and implement some aspects, as stated in the previous report to Committee.
- 3.2. **Legal** - The report confirms legal requirements around provision of school transport.
- 3.3. **Community (Equality, Poverty and Rural)** - School transport is predominantly provided in smaller communities and rural areas. The recommendations support provision of an equitable service of appropriate standard.

- 3.4. **Climate Change / Carbon Clever** - The Council's current school transport policy does not currently refer to environmental sustainability. This should be considered as the policy is revised and updated.
- 3.5. **Risk** - If mitigating actions such as described in this report are not taken to address increasing contract costs and other factors such as driver shortages, there is a risk of the Council being unable to fulfil its statutory duty to provide school transport.
- 3.6. **Gaelic** - The current policy for Gaelic Medium school transport is found to be logical and consistent with Government guidance.

#### **4. Final report from school transport review**

- 4.1. The final report from TAS is appended to this paper. It comprises an Executive Summary and seven chapters:-

- 1. Introduction and Objectives
- 2. Policy Review
- 3. Procurement
- 4. Operations
- 5. Community Transport Potential
- 6. Operational Monitoring & Quality Standards
- 7. Information & Communication Technology
- 8. Conclusions & Recommendations

Chapter 8 is substantially the same as the summary report presented to the Committee in December. The other chapters analyse the themes in detail.

- 4.2. At the request of the Economy and Infrastructure Committee further comment on the implications of the new free bus travel scheme for persons aged under 22 is provided in chapter 3.

#### **5. Presentation**

- 5.1. John Taylor, Director of The TAS Partnership, will give a presentation to Members on the report and will be available to answer any questions.

#### **6. Next steps**

- 6.1. Transport staff, and others as required, will continue work to implement the decisions agreed by Economy and Infrastructure Committee on 2 December and to analyse in more detail the elements identified as requiring further reports to the Committee. Options for staff resources to implement the recommendations, as outlined in the previous Committee report, are being examined, and will be progressed as part of the Transformation Agenda.

Designation: Executive Chief Officer Infrastructure, Environment & Economy

Date: 13 January 2022

Authors: David Summers, Principal Transport Officer

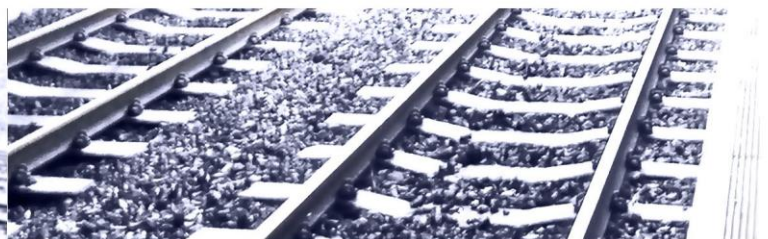
Background Papers: [Report](#) to Committee on 2 December 2021

# School Transport Review – Final Report

The Highland Council  
10288C

January 22

FINAL



**The TAS Partnership Limited**  
Passenger Transport Specialists

# Quality Assurance

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# Executive Summary

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## 1. Introduction

- 1.1 The TAS Partnership (TAS) was commissioned in Spring 2021 to undertake a detailed review of the education transport activities of The Highland Council (THC), encompassing policy, commissioning, in-house operations, external providers, quality standards, and budget issues. This final report presents the findings of the review and the separate sections are here summarised.

## 2. Policy

- 2.1 THC's requirement to provide travel assistance between home and school is set out in Scottish legislation and Government guidance. Authorities must meet minimum requirements but may adopt policies which exceed these, most commonly by making transport available to children whose homes are situated at less than the statutory 'walking distance' from the school. THC continues to use the statutory minimum, thereby avoiding an increase in its financial burden. Pupils with Additional Support Needs (ASN) are potentially eligible for free transport irrespective of distance – assessing this involves a combination of discretion and reference to reasonable practice. Travel support may also be required where a 'within distance' walking route is assessed as unsafe given the pupil's age and abilities. A formal assessment technique used by many authorities across the UK is available to assist such decisions.
- 2.2 THC's School Transport Policy covers all required issues and satisfactorily aligns with Government expectations on all major matters. The main weakness in THC's policy is that it focuses on 'transport' provision and requires expanding to cover other forms of 'travel' support such as: Independent Travel Training; Cycling grants or Parental or student travel budgets. The focus on 'transport' sets parental expectations. The review also highlighted a number of areas where the policy could be revised to improve clarity and consistency.

## 3. Procurement

- 3.1 THC adopts a conventional approach to procurement as a means of achieving best value services and, where possible, cost efficiencies. THC faces considerable challenges in its provision of school transport due to the geographical distribution of residents and schools and distances involved. The operator market (especially bus and minibus operators) is limited and the competitive forces that can be played to drive down costs in a tendering situation elsewhere are not always available – over 30% of tenders issued produced only one bidder. This limits THC's options and frustrates best-value efforts.
- 3.2 THC has adopted a Joint Procurement Strategy along with Aberdeen City Council and Aberdeenshire Council, and has recently adopted a Dynamic



Purchasing System (DPS) which optimises the potential for competition. At the time of the review THC had commissioned 423 school transport contracts, plus 85 public bus or dial-a-bus contracts and community transport support involving around 90 different providers fulfilling these contracts with a 20/21 budget of £16m and a projected outturn some £2m above this. Excluding the public transport elements leaves a school contract cost of ca. £13.5m. This excludes the cost of passenger assistants (escorts) which are managed and paid for via the schools. TAS considers the procurement approach appropriate and efficient given the market conditions in Highland region, and there are no recommendations for major alterations to the current approach. The Conditions of Contract document that stipulates the operations standards of contractors, however, has been subject to detailed scrutiny and numerous textual amendments have been suggested to improve clarity and consistency, remove ambiguity and address omissions.

## 4. Operations

4.1 THC commissions transport to school for around 8,800 pupils, 97% of whom are provided for by commercial operators. Provision involves a mix of:

- contracted dedicated bus, coach, minibus, taxi and private hire car services including some provided by community transport;
- contracted registered local bus services which are primarily for school bus purposes but which are open to the general public;
- bus passes purchased for use on commercial local bus services;
- a small number of termly rail season tickets
- a very small use of ferries;
- in-house provision using a small fleet of minibuses, often based with schools;
- grants to parents to convey their own children or to accompany their children on one of the services above.

4.2 Undertaking cost comparisons between modes is challenging, not least because a number of commercial bus services are dependent on school contracts for their viability, and so any conclusions around cost-effectiveness need to take this into account. Including seats required for escorts, the average annual costs per non-ASN seat were:

- Commercial contractors      £1,472
- In-house provision              £1,159
- Parental grants                  £2,062

The cost per seat on commercial ASN contracts was £2,931.

- 4.3 Given the high proportion of eligible children who require dedicated transport because of the nature of public bus services in Highland, combined with significantly longer average journey times (the cost of driver time is the key cost component in school transport) these figures compare well with those experienced in other authorities in Scotland and UK.
- 4.4 In-house provision offers good value for money and could potentially be expanded although there are some physical constraints. Parental grants are offered where there are no immediate alternatives and some involve 'awkward' journeys. Over all modes, service quality is generally good and contractors are reliable. THC might undertake user satisfaction surveys, produce a more robust code of conduct for pupils, and consider offering a range of alternative travel modes including cycling and ITT initiatives that have been promoted by Scottish government and adopted by other Scottish authorities.

## **5. Community Transport**

- 5.1 This section provides an overview of the community transport (CT) sector and its relative strengths and limitations. The role of CT has been under scrutiny in recent years. One critical area of concern has been the legality of s19 / s22 CT operators being commissioned to deliver home to school services under contract, although the DfT's revised s19 / s22 permit guidance does not exclude this. THC currently supports 26 CT services through grant aid of £359k p.a. (an average of £13,800 per group). THC has worked closely to develop the Highland CT sector, recognising the value of a community-based asset as a potential provider of rural services for the general public, as well as expanding market options for home to school work. There are a complex range of factors examined around how far CT in the Highlands can be developed further to serve THC's needs, and a number of options and approaches are provided. In short, the CT sector offers high-quality, low-cost and localised transport solutions but cannot necessarily be expected to offer any 'quick fix' for the authority. Significant potential remains in the sector, however, and THC's relationship with the various CT operators (and its ability stimulate the formation of new operations) should be continued to be pursued.

## **6. Monitoring and Quality**

- 6.1 This chapter is concerned entirely with operational quality standards – the measures taken by THC to ensure pupils are transported in safety and comfort. The critical aspect of this issue is the carriage of ASN pupils, whose needs and requirements necessitate both suitably adapted vehicles and trained drivers and where risks are higher. Spot checks were carried out at four schools, and at two of these a number of drivers were observed to be not fully complying with the correct safety procedures. It is recommended that THC strengthens its approach to safety by ensuring its contractors undergo a

more systematic and comprehensive training programme. THC's approach to monitoring is not currently adequate and requires more staff time to be allocated. Comparisons with other local authorities suggest that – for the scale of its operations – at least one full-time compliance monitoring officer should be deployed. Additional areas that would benefit from improvements include: vehicle conformity checks; site management arrangements (involving school staff); ID badging; re-drafting the sections of contracts that pertain to safety standards.

## **7. ICT**

- 7.1 The Passenger Transport Unit (PTU) uses a Pupil List spreadsheet in three operating areas to keep track of pupils travelling on school transport as well as manage contracts with operators (in-house fleet and external providers), parental contracts and privilege places for fare paying pupils. The Pupil List was created by a staff member who is no longer in the PTU but is available to provide support on an ad hoc basis. This is unsatisfactory from a business resilience and continuity perspective. In addition, the Pupil List does not include many features that are standard in bespoke H2S software packages. Not least is the fact that, as currently constructed, budget management is a complex manual process, and that different naming conventions have been adopted by the three PTU areas which makes consolidation and analysis challenging. For these reasons, the PTU is looking to replace the Pupil List with a proprietary H2S contract management system and this study has reviewed the requirements for such a system. H2S and passenger transport management systems deployed in other authorities are reviewed, including the specification developed by Aberdeenshire Council, which they used to tender for new transport bookings, scheduling and contract management software. The review of business processes identifies the key functions that need to be retained as well as highlighting additional features that should be included in the software specification. There are several commercial off-the-shelf H2S transport programs that are available with a proven track record in the UK market that provide these features.
- 7.2 The review recommends that the PTU replace the Pupil List with a new Passenger Transport Management System (PTMS) to improve its business processes with the following benefits: Access to better quality information; More streamlined and automated procedures; Ability to optimise routes and schedules in a more flexible manner; More efficient and cost-effective operation. In summary, a robust PTMS will give the PTU more control over the business process and enable many improvements which will be transparent internally as well to commissioning customers in other departments, the council and the wider public.

## **8. Conclusions and Recommendations**

- 8.1 Our conclusions recognise the unique situation of THC whereby its geographical challenges and scarcity of commercial transport provision create

conditions in which the means of achieving significant and immediate cost-efficiencies are difficult. However, the TAS review has identified a range of areas where THC can take action to improve its management of home-to-school, create a safer and more compliant level of service, and expand its range of travel options to reduce its financial burden in the medium term. Specific recommendations are summarised below.

- 8.2 **Policies** – School Transport Policy should be renamed as a Travel Support policy and include text on: Alternative travel arrangements; Environmental sustainability; Expectation of service standards; Codes of conduct for both transport providers and parents; Risk assessment processes; and incorporate GME (Gaelic Medium Education) policy in the overall document. The appeals process section should be reinforced. The Policy would benefit from improved layout and presentation.
- 8.3 **Eligibility** – THC should: Consider whether all applications for travel support should be electronic; Review the role of schools in the application process; Commission suitable transport management software; Review means of obtaining electronic confirmation that individual pupils have made use of THC provided transport; establish a formal process for discretionary decisions that provides records of the basis for decisions and an agreed review date.
- 8.4 **Transport Options** - THC should: Examine the feasibility of establishing an Independent Travel Training function; Establish a programme that promotes and offers the use of bicycles, and review the current travel cost reimbursement system with a view to making it financially more attractive.
- 8.5 **Community Transport** – we recommend that THC establishes a community transport support strategy that has the objective of developing the sector’s capacity.
- 8.6 **Planning** - we recommend that THC should: Commission integrated transport management software to significantly increase the system’s functionality and reporting capacity; Use the challenge created by the introduction of free transport for Under 22’s to review its policy and practices.
- 8.7 **Procurement** - much of what THC does already meets good practice. However we recommend that THC should: Revise the Conditions of Contract and its the approach to self-employed / sub-contracted drivers to ensure that the necessary controls and assurances are in place; Consider the enforce or promotion of “real living wage” employment within school contracts; Streamline the performance management process; Reinstate a programme of supply market engagement and research; Explore ways in which a consistent and comprehensive training package for operator frontline staff delivering school transport can be delivered, particularly for pupils with ASN; Examine the potential for groups of parents to share transport provision for entitled children and explore the feasibility of a driving training scheme to introduce new drivers into the larger vehicle passenger transport.

- 8.8 **Operations** - We recommend that THC should: Set out the safety and operational standards for the in-house fleet operation in a reference document; Introduce a more systematic approach to operators and new drivers introducing themselves to pupils and their families before they start to provide the service; Develop a system to formalise the operator responsibility to assess and confirm suitability of agreed pick up and drop off locations; Provide schools with transport site risk assessment tools and guidance.
- 8.9 **Monitoring** - We recommend that THC should: Develop a proactive contract monitoring schedule; Identify appropriate resources to make suitably trained staff available; Develop a proposal for discussion with operators whereby THC would commission and control a mandatory training programme.
- 8.10 **Reporting & Review** - We recommend that THC should: Complete the specifications, procure and commission a Passenger Transport Management System (PTMS) as soon as possible; Draw up a more focussed Service Level Agreement between Education and Transport Unit; Ensure that the PTMS and the SLA incorporate adequate environmental impact metrics; Develop a rolling schedule covering at least a year for SLA monitoring meetings.
- 8.11 **Budget Creation** - We recommend that THC should: Create the framework for a build-up budget that identifies the principal factors behind cost changes and gives the basis for more accurate forecasts of outturns; Draw up an Implementation Plan that prioritises actions and an associated reporting framework from within a 'long list' of cost-saving activities identified within this review.

## 1.1 Introduction

1.1.1 The Highland Council (THC) has commissioned The TAS Partnership (TAS) to undertake a review of its home to school transport policy and practice. THC required the scope of review to include:

- Compliance with legislation;
- Areas exceeding current legislation;
- Compliance with, or variations from, common or good practice;
- Eligibility criteria and processes, including ASN eligibility;
- Management of escorts;
- Contract duration and retendering and
- Comparison of policies with other Scottish rural authorities.

## 1.2 Objectives

1.2.1 The objectives of the review are to:

- a) Identify any potential for economies and efficiencies, whilst maintaining service quality and legal compliance;
- b) Improve understanding of the cost drivers associated with school transport so that they can be better managed;
- c) Examine the planning and delivery processes and reporting arrangements to provide assurance that they are fit for purpose and provide best value.

The review covers both demand-management and supply-side issues.

1.2.2 Areas addressed include:

- a) Identification and costing of discretionary provision and comparison with other authorities.
- b) The process of eligibility assessment, particularly in respect of children with ASN. This covers both the requirement for travel assistance generally but also the assessment of the appropriate type of travel assistance.
- c) Provision and management of passenger assistants.

- d) Managing and incentivising the transport supply market and the mix between commercial, community-based and in-house provision.
- e) The potential for alternative methods of delivery, including parental grants, independent travel training and the potential for parent-led school travel clubs.
- f) Advice on the selection and procurement of a suitable transport management software system.

## 1.3 Our Approach

1.3.1 This review was structured using the TAS Review Cycle approach developed from a concept created by the Audit Commission to structure thinking about local authority best value reviews. The various components are set out in their logical order in Figure A below:

**Figure A: School Travel Review Cycle**



1.3.2 Each element of the cycle contains the potential for improvement and therefore these have been reviewed in turn against national best practice and the latest developments and approaches in other authorities. It will be seen that the first part of the cycle is concerned with demand management.

1.3.3 The review was broken down into the following component Tasks:

- Policy;
- Eligibility Assessment;
- Travel Options;
- Planning;
- Procurement;
- Operations;
- Operational Monitoring;
- Performance Reporting & Review;
- Budget Creation;
- Governance & Structures and
- Information & Communications Technology.

1.3.4 For each of these tasks, TAS has:

- a) undertaken analysis of primary data provided by THC, including standing policies and reports;
- b) conducted interviews with a number of key THC personnel;
- c) researched at national and other local authority level to understand overarching legislation and policy and to gather comparative data;
- d) liaised with operators and potential suppliers to THC and
- e) Engaged PUWTEC to undertake on-site observations at a number of schools.

1.3.5 During the course of the review a number of areas were identified that were not explicitly part of the brief but which have been included at the request of THC:

- Training Specification for drivers and assistants;
- Community Transport – legal and strategic advice paper (now forming chapter 5)
- Responses to 'Operator X' who contacted TAS directly over a number of issues; and



- Drafting THC's RITB Power Point.
- Legal position of taxis and private hire operators in the future regarding prime/subcontractors, worker status, taxation
- Safety audits
- Implications of free bus travel for under 22s
- RPI and inflation indexing
- Driver CPC initiative

1.3.6 TAS wishes to acknowledge its gratitude to the following persons for their assistance in undertaking this review:

- Robin Pope – Policy & Programmes Manager;
- David Summers – Principal Transport Officer;
- Ali MacDonald – Senior Transport Officer;
- Karen Giles - Senior Transport Officer;
- Ian Jackson – Education Officer;
- Caro Munro – Transport Officer East;
- Lynn Ross – Transport Officer North;
- Linda MacQueen – Transport Officer West;
- Phil Kyle - SEEMIS officer;
- Bill Couston – Additional Support Needs Manager;
- Mike Cooper – Transport and Logistics Manager;
- Michael Davidson - Principal Services Information Officer;
- Mark McGinty – Trading Standards Team Leader and
- Michael Elsey – Senior Licensing Officer.

## **1.4 Report Structure**

1.4.1 The findings from the key tasks noted above have been circulated as draft notes and are here presented in chapters which have been revised following feedback from THC as follows:

- Policy Review;

- Procurement;
- Operations;
- Community Transport Potential;
- Operational Monitoring & Quality Standards and
- Information & Communications Technology.

1.4.2 The tasks where no separate notes have been circulated have been covered either in the chapters above or in the conclusions section. It should be noted that some of the original notes circulated separately included appendices and some data that has been omitted from this report – these are noted in the text.

## 2.1 Introduction

2.1.1 This chapter covers the area of home to school transport policy and how transport provision is promoted and reflected in THC's media. The purpose of the chapter is as follows:

- To ascertain how THC policy aligns with Scottish Government legislation;
- How the THC policy compares with other Scottish authorities in terms of discretionary variations and general initiatives that other authorities have instigated;
- To set out the working principles that are applied in specific aspects of THC policy and provision;
- To suggest possible areas of improvement and development that THC might productively pursue.

2.1.2 When a policy is implemented, there is generally some interpretation in how it is applied, and so the overall approach is not necessarily encapsulated in policy documentation alone. THC practice regarding eligibility and the availability of travel support options are covered elsewhere in the reporting. Initial THC comments have been incorporated from interviews with David Summers (DS) and Karen Giles (KG).

## 2.2 School Transport<sup>1</sup> Policy in Scotland

2.2.1 The legal provision for school transport being provided by a Scottish local authority is the Education (Scotland) Act 1980, Sections 42(1), (4) and 51(1), as amended by the Education (Scotland) Act 1981, Section 2, the Education (Scotland) Act 1996, Schedule 5 and the Standards in Scotland's Schools, etc. Act 2000, Section 37. The critical issue is determining which pupils<sup>2</sup> are eligible for free travel support and how the council fulfils its legal obligation to those pupils. The latest (2021) government guidance on school transport is [here](#).

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<sup>1</sup> The term 'school transport' should be interpreted to cover "provision of transport and other facilities" as it includes provision of cycling and payment of travel expenses. This reduces the automatic expectation that a bus or taxi will be provided; many English authorities are now replacing 'transport' with 'travel support' for this reason.

<sup>2</sup> In this chapter, 'pupils' includes 'students' and 'children' includes 'young people'.

- 2.2.2 The Scottish<sup>3</sup> eligibility criteria for mandatory free transport for pupils is based primarily on whether:
- a) The child is attending the school allocated to them under the authority's published placement arrangements<sup>4</sup>;
  - b) The school is not within 'walking distance':
    - ◆ 2 miles or more from the school if pupil is under 8;
    - ◆ 3 miles or more from the school if pupil is 8 or older;
  - c) the walking route along which the distance is measured is 'safe' and
  - d) the child should be capable of walking the route, accompanied as necessary by an adult.
- 2.2.3 Authorities may, of course, exercise their discretion to go beyond this baseline requirement but this is not necessarily straightforward. For example, Section 28 of the 1980 Act requires education authorities, when exercising and performing their powers and duties under the Act, to have regard to the "general principle" that
- "...so far as is compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents".*
- 2.2.4 The issue of parental choice is then constrained by specific rules about 'placing requests' i.e. a decision by the parent to request that the child be educated in a school other than their catchment school or, in the case of children with Additional Support Needs (ASN), other than the school identified by the local authority as best meeting their additional needs. With some very minor exceptions it is not mandatory for the local authority to provide travel support for a child to attend a placing request educational establishment although it may exercise its discretion to do so.
- 2.2.5 Decisions about the appropriate school for an ASN child are primarily educational and welfare decisions, not transport ones, but the courts have made clear that the authority can take into account the issue of 'reasonability' of expenditure set out in Section 28 and the cost of potential transport arrangements can be included in the factors taken into account when the authority makes its decision.
- 2.2.6 The authority will normally determine the 'appropriate' catchment school by reference to community geography. Whilst catchments are often exclusive,

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<sup>3</sup> See also <https://www.mygov.scot/free-school-transport/>

<sup>4</sup> Authorities are under a duty to set out their arrangements for allocating pupils to schools. This is commonly done through delineation and publication of school catchment areas (as THC does). Authorities will then use these catchments to allocate children to the catchment school for their area with a priority system for cases where there may not be enough places.

they do not have to be – this may give parents a choice of schools, both of which may have travel support attached to them. In addition, the authority may set wider ‘travel catchments’ for denominational schools where they allow parents to choose to have their child educated within a particular faith framework.

- 2.2.7 In the case of Gaelic Medium education, the authority has specific legal duties to provide such education where demand warrants it and where schools delivering Gaelic Medium education have been provided, the authority is under a duty to develop and publish its arrangements for placing children in those schools. These arrangements normally include the identification of catchment areas for each school and the Statutory Guidance<sup>5</sup> on Gaelic Education states that authorities are under a duty to publish catchment areas for Gaelic Medium education schools as part of these arrangements. It seems reasonable to expect, although not explicit in the legislation, that the published arrangements will include an explanation of the circumstances under which travel support will be provided – this would normally be in line with the general policy i.e. transport provision made to children travelling to their nearest appropriate school (i.e. the Gaelic Medium school within whose catchment their home is) provided the walking distance is above the standard criteria.
- 2.2.8 These are all examples of the discretion open to the authority. There are also interpretation decisions to be made which may include subjective elements, such as whether a route is ‘safe’, whether a child is capable of walking the route or whether the route is ‘available’. Some suggestions as to how to exercise such discretion and make decisions correctly are set out in the rather brief government guidance referenced above.
- 2.2.9 Authorities also need to take into account decisions made by the Scottish Public Services Ombudsman in respect of school transport (thirteen since 2011) and there have been a small number of court cases that set precedents as to interpretation of the legislation directly relating to transport provision and a larger number of cases that consider the implications of transport and travel when considering placement requests and school closure decisions. In these cases, Scottish courts have taken into account the more numerous legal cases determined in England and Wales (the principles against which local authorities provide transport being almost identical to those in Scotland) and there is a very significant number (hundreds) of Local Government Ombudsman decisions on school transport in England & Wales which are germane to decisions in Scotland e.g. the Ombudsman will not challenge a reasonable professional decision to use mapping software to determine walking distance.
- 2.2.10 The point here is that a significant proportion of the decisions that have an impact on transport expenditure will in some way relate to policy and its

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<sup>5</sup> <https://www.qaidhliq.scot/wp-content/uploads/2017/01/Statutory-Guidance-for-Gaelic-Education.pdf>

interpretation and many of these are primarily educational decisions rather than to do with transport or logistics. Consequently, to ensure best value, the Council needs to find a way of ensuring that appropriate professional expertise and knowledge from education as well as from transport is applied to the decision-making process and the two disciplines work closely together with a view to achieving the Council's corporate objectives. The statutory guidance suggests that the decision-making process should potentially include:

- information from parents and carers;
- recommendations from school staff and
- recommendations from Psychological Services, community and allied health professionals.

2.2.11 This is particularly relevant when considering the eligibility for travel support of pupils with 'additional support needs' (ASN), including factors deriving from disability, health or behaviour. Note that there is no automatic link between an identification that a child or young person has 'additional support needs' by the local authority under the Education (Additional Support for Learning) (Scotland) Act 2004 as amended and their eligibility for travel support. Many children formally recognised as having ASN, including those for whom a 'co-ordinated support plan' has been made, do not qualify for travel support. Equally, there will be children who have not been formally recognised as having ASN who are entitled to travel support – for example due to a temporary injury or short-term family circumstances. However, where a child is being assessed for ASN, then the local authority is under a duty to include the need for transport support in this process.

2.2.12 The question may also arise as to whether there is a suitable adult available to accompany a child where that is necessary. In most cases it is up to the parent(s) or adult(s) with caring responsibilities (including foster parents) to organise this; clashes with working or commuting arrangements or other matters of convenience do not justify provision of transport. However, local authorities are expected to exercise discretion in favour of the parent or carer where nobody is available due to a disability or health circumstance that prevents them accompanying their child. Even there, there are examples where a parent using a powered wheelchair accompanies their child walking to and from school in order to 'normalise' the child's experience as far as possible.

2.2.13 The decision as to whether the child is capable of walking to school unaccompanied is one for the parent because it is their underlying responsibility to ensure that the child attends appropriate education. A parent may decide that a child can walk unaccompanied at an early age; unless this raises a significant safeguarding concern this is not a matter for the authority. However, the authority may have to assess whether a child needs to be accompanied where no parent is available due to disability or health issues

and no alternative adult is available from within the family's support circles. Any such assessment would need to be done on a case by case basis reflecting (inter alia):

- The child's understanding of and ability to comply with traffic rules;
- Their developed sense of self-responsibility;
- Whether they walk equivalent routes unaccompanied at other times and
- Particular features along the route e.g. requirement to cross roads other than at delineated crossings, with poor sightlines or frequent peak traffic [Note that this is a different assessment from the general 'safe route' assessment which assumes that the child is accompanied].

There is no 'age' (in law or guidance) below which it is considered unreasonable for a child to walk unaccompanied.

- 2.2.14 The statutory guidance emphasises the role that school travel arrangements can play in developing a child's independence:

*"Getting school transport right and making it accessible to all can be an enabler for many young people to reach their full potential and live fulfilling and independent lives. We should not underestimate the role that the school journey can play in building confidence in young people to travel independently, which may help them access higher and further education and, ultimately, employment."*

This suggests that, within their planning, local authorities should maximise the use of public transport and active travel for the school journey and ensure that as many children with ASN are able to access these services by empowering them through Independent Travel Training and related support.

- 2.2.15 If transport is offered, this does not have to be on a door to door basis – there can be a walk journey between home and the pick-up point (and potentially between the drop-off point and the school) provided the combined walk distance is no longer than the local authority's standard age-related distance criteria. The parent is responsible for supervising the journey between home and the pick-up point. This journey needs to be along a safe walking route and the identified pick-up and drop-off points need to be safe.

- 2.2.16 For the journey between the drop-off point and the school, the authority would take on the duty of care and would need to assess whether any supervision would, be required e.g. at a crossing point and reflecting the age of the pupils involved. Where the travel arrangements are on a public bus service that drops off away from the school then any parent concerned about supervision of the child would have the option of accompanying them on the bus. Typically, this may apply to services that drop off at a town centre bus station rather than run an extension to the school.

- 2.2.17 There is no statutory duty in respect of the provision of supervision whilst pupils are on board the transport provided. This is therefore another discretionary issue reflecting the fact that the authority is 'in loco parentis' during the journey and it may be considered necessary given the child's age, their particular medical or care needs, their behaviour patterns or previous incidents during transport that the authority becomes aware of.
- 2.2.18 Where transport is offered on a discretionary basis, this may be charged for. This includes where the Council makes available spare places on vehicles that have been commissioned to transport entitled children for use by non-entitled children – so called 'privilege lifts'. But the Council should consider families' ability to pay when determining its charging policy – this requirement is usually met by a reduced charge for low income families – in THC's case this is determined by reference to eligibility for clothing grants.
- 2.2.19 The local authority duties in respect of 'school' transport do not extend to pre-school education so any provision, including that for young children with ASN, is discretionary. However, they otherwise apply to the attendance of pupils at schools and other relevant educational establishments, even though the pupil may be beyond the statutory school age i.e. it applies to attendance at schools beyond 16.
- 2.2.20 Each authority is required to offer a system of appeal and complaint. If internal systems prove unsatisfactory, external bodies can be approached:
- Resolver Service (<https://www.resolver.co.uk/complaints/public-services-complaints>) processes and manages complaints on behalf of public bodies, including The Highland Council and
  - The Scottish Public Services Ombudsman (SPSO).

## **2.3 Highland Council School Transport Policy**

- 2.3.1 Making of policy primarily rests with the Economy & Infrastructure Committee or (if not requiring a Committee decision) by ECI officers, in consultation with Education. This approach covers mainstream and ASN school age and post-16 learners attending school or equivalent establishments. For any transport provision for swimming, curriculum or sports, policy lies with Education in schools, except for some ASN placements to special units (known as "ASN Demand-led"). The only college transport is school placements to college (managed by Education). The Transport Unit determines the policy on charging for the discretionary or 'privilege' pupils.
- 2.3.2 THC's school transport policy (dated May 2016) indicates how the authority implements its legal duties and where it applies discretionary factors. The purpose of the School Transport Policy is as follows:
- a) It demonstrates how THC meets its legal obligations;



- b) It underpins the eligibility criteria and clarifies the circumstances in which transport or travel support is available or refused – this functions for THC staff, the schools, parents and pupils themselves;
- c) It outlines the expectations and responsibilities of parents or guardians with regard to transport and travel support and indicates communication channels with regard to inquiries, appeals and complaints;
- d) It states the quality standards (primarily safety and wellbeing issues) required of transport providers.

The Policy generally aligns with Government expectations on all major issues.

2.3.3 Areas that are weak or missing from THC’s policy are that:

- It focuses on transport provision and requires expanding to cover other forms of travel support such as:
  - ◆ Independent Travel Training;
  - ◆ Cycles or
  - ◆ Parental or student travel budgets
- It would benefit from a statement about environmental or sustainability objectives related to school travel, including for both entitled and non-entitled children e.g. walking buses and Bikeability;
- Compliance monitoring and safety checks – this is a key part of contract management and in practice the approach (pre-COVID) is not as robust as it might be;
- Data protection – reference is made only with regard to CCTV, although the terms of the DPS or Framework is strong on general data protection and confidentiality;
- Appeals – whilst the internal review process is outlined, the Policy does not make reference to ways in which appeals can be escalated through external agencies (Resolver Service, Ombudsman) – see Ombudsman recommendations below;
- Complaints procedures – the only reference is the following: “Inquiries and complaints about school transport provision, if not resolved by the contractor, should be made to the relevant Local Transport Office or to [public.transport@highland.gov.uk](mailto:public.transport@highland.gov.uk).” This is presumably aimed at those for whom transport has been allocated and suggests that the contractor is the first point of contact for complaints but the specific process is not apparent from the policy or information on THC website;

- Driver and assistant training standards – these are not referred to at all and the requirement in DPS or Framework is that drivers must be trained and qualified to a standard: “which the Contractor holds out as having sufficient skill and expertise for the proper performance of the Services.” There is no reference to Protection or safeguarding training (see Ombudsman recommendations below);
- Driver and assistant ID badges – although drivers and assistants carry ID badges, these are not uniform;
- Vehicle visibility and school bus signs – some policies from elsewhere make a point of emphasising how school transport is visually indicated, beyond the statutory minimum;
- Adverse weather guidance – there is no reference to how this information is conveyed - Education issues an annual adverse weather circular to schools and the Transport Unit does to contractors.

2.3.4 It is accepted that beyond covering the key issues policies may contain greater or lesser levels of information and it would be at the authority’s discretion as to how comprehensive and exhaustive the document might be. The policy, therefore, needs to be seen alongside other complementary material such as that offered online or in leaflets, letters and booklets. THC policy runs to seven pages and although available on THC website, lacks any presentational value. (Examples of more comprehensive and better presented policies are those of Stirling Council <https://www.stirling.gov.uk/media/23081/schooltransportpolicy.pdf> and Glasgow City Council <https://www.glasgow.gov.uk/CHttpHandler.ashx?id=34897&p=0>).

2.3.5 In general the current policy dates from May 2016 although the document itself bears no date. The policy document would benefit from some reference to periodic review dates.

## **2.4 ASN Transport**

2.4.1 THC’s Additional Support Needs Team supports the most vulnerable young people and families and ensures that children with additional support needs can access the curriculum on an equal footing with other children. Transport provision is a key element of this support, and – as noted above – where a child is being assessed for ASN, then THC is under a duty to include the need for transport support in this process. There is no separate ASN transport policy and ASN pupils’ needs are incorporated in the overall School Transport Policy mentioned above.

2.4.2 Pupils assessed as qualifying for additional support can apply for transport via a specific application form and transport is allocated following consideration of the following factors:

- the exact nature of the pupil's additional support needs and why transport is required
- the pupil's ability to use mainstream transport (if available)
- the pupil's ability to travel with other pupils
- the need for an escort/attendant to travel with the pupil
- the availability of a family member able to act as an escort/assistant.

## 2.5 Independent Travel Training

- 2.5.1 Independent Travel Training (ITT) is not available in THC for pupils and the authority is not the main provider agency for Adult Social Care, where some synergy around ITT might otherwise have been identifiable. In practice, ITT is often delivered by external and voluntary sector bodies. In Highland, the authority is partnered with employment support agency Enable: "ENABLE Works' All in Highland Project is supported by Highland Council and European Social Fund to provide a personalised support service for people with Additional Support Needs, aged 16+ and based in the Highlands, to help find and keep a paid job...Activity will include (but not limited to): Independent travel training..." <https://hi-hope.org/directory/listing/enable-works-all-in-highlands-project> and <https://www.enable.org.uk/get-support-information/adult/enable-works/>.
- 2.5.2 ITT is not a notable feature of many of the other Scottish authorities: the main exception is Edinburgh, which has an active policy of ITT provision for pupils. It is included in guidance materials from Falkirk but the active project in Perth & Kinross may be limited to 16+ ASC clients.
- 2.5.3 In general, the Scottish Government and Transport Scotland encourage approaches to local authorities on the matter of ITT, which implies that authorities should ideally have a specific policy, which at minimum might be a means of signposting enquiries to an external body:
- **Scottish Government** "If you would like coaching or individual support to access public transport independently, talk to your local council about travel training. They may be able to organise someone to mentor you making a journey, or give you further information about suitable services. Transport providers allow you to try their vehicles and services yourself before making a journey. For example, some bus companies will let you try out a bus at a bus station or depot before you go. You can also ask an airport for a tour before a flight. Just contact the transport operator to find out more." <https://www.gov.scot/publications/supporting-disabled-children-young-people-and-their-families/pages/transport/#What%20can%20I%20expect%20from%20transport?>

- **Transport Scotland.** "For some disabled people there is a fear of travelling either supported or alone. Travel training provides practical and tailored help to those who need support to travel both without fear and, where possible, independently. Travel training is a term used for very many different forms of help in terms of approach used and the length of contact. While most travel training that currently exists is geared towards people with learning disabilities, it can play a role for people with any impairment, such as those who have not used public transport for many years but have lost their driving licence for medical reasons.
- In Scotland, travel training is delivered at the local level meaning service provision can vary. Travel training is delivered predominantly by social work and third sector organisations. An example illustrated [in link below] is from Stirling Council's "Streets Ahead" day support service for adults with learning disabilities which for the past 15 years has supported several service users with aspects of being independent in their own communities."  
<https://www.transport.gov.scot/publication/going-further-scotland-s-accessible-travel-framework/j448711-08/>

2.5.4 Whilst it is difficult to estimate how an ITT programme would impact on THC's school transport resource (for how many pupils is it appropriate? what level of support is required?) the longer-term benefit of ITT is valuable for individuals moving towards independence and in reducing the need for more expensive transport interventions.

## 2.6 Gaelic Medium

2.6.1 Overarching legislation under the Education (Scotland) Act 2016 "establishes a process by which parents can request Gaelic Medium Primary Education (GMPE) from their education authority."  
<https://education.gov.scot/parentzone/my-school/choosing-a-school/gaelic-medium-education/gaelic-medium-education-foghlam-tro-mheadhan-na-gaidhlig/>

2.6.2 Highland Council Policy on Gaelic Medium: "*Transport is not provided to support Gaelic learner experiences in early learning and childcare settings. Transport for GME schools/departments is provided on the basis of defined GM catchment areas, where these have been established. Children may be eligible for free school transport if they are:*

- *Under 8 and live more than 2 miles from school*
- *8 or over and live more than 3 miles from school*

*When a defined GM catchment area is in place, transport will not be provided for children who live outwith the GM catchment area.*

*Where no GM catchment area has been defined but school enrolment has been granted on the basis of a Placing Request, parents/carers should be referred to Highland Council's Home-to-School Transport Policy to clarify transport responsibility. In such circumstances, GM school transport may be provided if the distance is reasonable. These arrangements are based on the principles of providing entitlement to transport to GME for Highland pupils, whilst also providing transport as efficiently as possible and avoiding duplication of routes or provision. There are areas where there is no entitlement as the distances involved would be excessive.*

*In some cases transport becomes the responsibility of parents/carers. The legal basis for school transport provision is found in the Education (Scotland) Act 1980, Sections 42(4) and 51(1), as amended by the Education (Scotland) Act 1981, Section 2, the Education (Scotland) Act 1996, Schedule 5 and the Standards in Scotland's Schools etc. Act 2000, Section 37 and Determining Primary School Capacity – Guidance, The Scottish Government (2014). For a full and comprehensive overview of how the Highland Council meets these legislative requirements, please refer to the Highland Council's School Transport Policy."*

- 2.6.3 For THC the mileage threshold is stated as a "reasonable" distance. Where catchments are not defined this is taken to be around 15 miles, although it can be stretched to cover very remote areas, mostly on the West Coast. Where GM catchments have been defined they generally cover combinations of English Medium catchments. In some cases, travel entitlement from the remotest part of a catchment has been excluded when catchments have been defined.

## **2.7 Other Safety Issues**

- 2.7.1 Much of THC's approach to ensuring safety standards is detailed in the DPS / framework specification and is aimed at ensuring compliance from operators. The Home to School Transport Policy covers the main issues in the section 'Safety and Supervision on Transport' and this is the main outward-facing document that conveys THC interest in safety. As indicated above, THC is not strong on communicating its commitment to compliance monitoring or training standards of drivers, especially around protection / safeguarding.
- 2.7.2 The Home to School Transport Policy was last reviewed prior to the Seat Belts on School Transport (Scotland) Act 2017 being ratified and makes no reference to this Act. THC policy on seatbelts was already compliant with the Act in terms of practice. However, THC has not produced an Annual Seat Belt Statement. This is required as the Act "imposes a self-reporting duty on school authorities, who must prepare an annual statement relating both to the steps they have taken to comply with the duty relating to ensuring that seat belts are fitted and also to the actions which they have been taking to promote and assess the wearing of seat belts by pupils travelling on their dedicated school transport services...In practice, this can be done on a website or in some kind

of hard copy document, such as an annual report (in the case of a grant-aided or independent school) or a report which is scrutinised by a council committee (in the case of a local authority school), so long as it is in the public domain. This will have to detail measures which have been taken to comply with the legal duty imposed by the Act.”

<https://www.transport.gov.scot/media/42287/seat-belts-on-school-transport-scotland-act-2017-guidance.pdf>

- 2.7.3 THC is aware of its failure to produce an Annual Seat Belt Statement. The Transport Unit has raised the matter with Education, which it feels should take responsibility for the statement. Apparently in the past Education were hesitant about putting the burden on schools. However, THC is in breach of its self-reporting duty by not circulating a statement.
- 2.7.4 In 2010 Scottish Government produced *A Guide to Improving School Transport Safety* (2010). The main outcome of the guidance was to recommend ten actions that local authorities could implement to increase school transport safety. The table below indicates how these have been progressed in Highland.  
[https://www.transport.gov.scot/media/6116/improving\\_school\\_transport\\_safety\\_guide\\_final.pdf](https://www.transport.gov.scot/media/6116/improving_school_transport_safety_guide_final.pdf)

**Table 1: School Transport Safety Measures in Highland**

Measure	Highland Council Response
a) Reduce speeds on school routes and around schools	Many 20 mph limits have been imposed and THC mounts periodic campaigns to urge motorists to reduce speed. <a href="https://www.highland.gov.uk/news/article/12714/drivers_urgued_to_slow_down_near_schools">https://www.highland.gov.uk/news/article/12714/drivers_urgued_to_slow_down_near_schools</a>
b) Encourage motorists to reduce their speed when passing stationary school buses	Apart from general speed reduction measures and campaigns, there is no specific THC campaign around traffic passing stationary buses. One approach to this elsewhere has been to introduce signage on buses that exceeds the size / visibility of the statutory sign minimum (not introduced by THC). Another is use of hazard warning lights (which THC does require).
c) Set minimum safety standards in school transport contracts	These are in place as part of the DPS / framework specification for external contractors and would potentially come under the SLA for fleet operations – however the draft SLA does not detail delivery requirements.

Measure	Highland Council Response
d) Risk assess school drop-off and pick-up areas	This could fall between the risk assessments undertaken by contractors and the schools themselves. There is a tool PUDO available for this. In practice, THC does not assess every pick up or drop off point. KG comment: "Usually, for a new stop, this is an assessment that the Transport Officer will make from conversations with parents and/or operators and looking on map room and google maps etc. No formal risk assessment is made. Where there is a query over the safety of the stop, or a complaint is raised by a parent regarding the stop or the walking route to it, the we'd go along and check ourselves or ask our road safety team to look." <sup>6</sup>
e) Review school travel plans, improve communication and clarify responsibilities	School travel plans are promoted by THC but it is not known how many have been completed. There is no identified review process.
f) Raise awareness of desired behaviours	This needs to be aimed at pupils, parents, bus / taxi drivers involved with school transport delivery and general motorists. Travel Behaviour Code for pupils, Home to School Transport policy for pupils and parents. Behaviours for drivers are determined by the DPS / framework specification and Road Safety Team campaigns.
g) Promote on-road pedestrian and cyclist training	Highland's Go For It (walking, cycling, scooting and wheeling reward card) and general Road Safety team initiatives such as Bikeability.
h) Encourage schools to use Road Safety Scotland's educational material	The extent to which Highland schools use the Road Safety Scotland's educational material is not known.
i) Discourage young novice drivers from driving to school and transporting others	Although active discouragement is not identified, THC does promote Driving Ambition (young driver road safety education).
j) Evaluate all interventions	Not known which of the above are subject to monitoring or evaluation. However it is likely that a), b), c) and d) would be evaluated on a systematic basis.

## 2.8 COVID-19 Guidance

2.8.1 Guidance from Scottish Government including a section on school transport appeared in May 2021. <https://www.gov.scot/publications/coronavirus-covid-19-guidance-on-reducing-the-risks-in-schools/pages/school-operations/#schooltransport>

2.8.2 This is summarised as follows:

<sup>6</sup> It is understood that a few years ago, all Head Teachers were instructed to risk assess the PUDO points within their school premises. However, it is unclear how many did, or what criteria they were asked to use.

- Dedicated school transport should be regarded as an extension of the school estate – distancing not necessary between young people, but 2m should be maintained where possible between young people and adults;
- Important mitigations include: hygiene, ventilation, improved cleaning regimes including regular and thorough cleaning of surfaces and regular handwashing. Face coverings should be worn on dedicated school transport (subject to exemptions), in line with public transport.
- Drivers and staff on public transport and to a lesser extent on school transport, are at relatively higher risk of exposure and particular attention should be paid to ensuring that they are protected from airborne and surface transmission and
- Children, young people and adults must not board dedicated school or public transport if they, or a member of their household, have symptoms of COVID-19.

2.8.3 The most extensive Scottish Government guidance on school transport with regard to COVID-19 was included in *Coronavirus (COVID-19): Guidance on preparing for the start of the new school term in August 2020*.

2.8.4 THC's key response to COVID-19 is *Protocol for Primary and Secondary School home to school transport* (October 2021).  
[https://www.highland.gov.uk/downloads/file/23433/protocol\\_for\\_school\\_transport](https://www.highland.gov.uk/downloads/file/23433/protocol_for_school_transport)

2.8.5 Variations from or enhancement to national guidance includes:

- 2 metre distancing between drivers and assistants where possible and 1 metre distancing where other measures are in place e.g. screen. It is accepted that this is not always possible with ASN passengers;
- Suggested detailed seating permutations for different vehicles types; [no longer applicable as physical distancing is no longer required between pupils];
- Parents to encourage passengers to put seat belts on themselves and to clean any equipment provided by parents (e.g. booster seats);
- Detailed good hygiene practices for passengers;
- Carriage of passengers with symptoms – in exceptional circumstances and with a range of enhanced safety measures;
- Use of consistent driver;
- Lateral Flow Testing – voluntary participation by drivers / operators.



- 2.8.6 In general, THC’s approach is consistent with the national guidance apart from the provision to carry passengers with COVID symptoms (albeit in exceptional circumstances), which runs contrary to the guidance.

## 2.9 Policy and Practice in Other Scottish Authorities

- 2.9.1 This section provides an overview of notable approaches elsewhere in Scotland. In citing policies and practices from elsewhere we add the caveat that the THC catchment is unique in terms of its larger size, rurality and dispersal of its residents and this may mitigate how far innovative approaches might be applicable in Highlands.
- 2.9.2 The table below includes publically-available material related to school transport in other Scottish authorities as of April 2021 which in some way differs or contrasts with that of THC. In some cases, the value of the comparison is how the authority presents its policies and information to the community and the effectiveness of its means of communication, for which the links are provided.

**Table 2: School Transport Policy & Practice Elsewhere**

Authority	Notable Variations of Approach
Aberdeen City	Statutory policy on distance is applied but exceptions are: “Where a child lives less than the prescribed distance from his/her zoned school (that is, less than the two or three miles indicated above) but cannot reach that school either by an available transport service or by an available safe walking route accompanied if necessary by an adult.” And “Where a child lives less than the prescribed distance from his/her zoned primary or secondary school (that is, less than the two or three miles indicated above), does not have access to a transport service and is unable to walk the prescribed safe route due to his/her own medical condition or to the medical condition of the adult who would normally accompany him/her on the walking route to school.” <a href="https://www.aberdeencity.gov.uk/services/education-and-childcare/school-life/school-transport">https://www.aberdeencity.gov.uk/services/education-and-childcare/school-life/school-transport</a>
Aberdeenshire	Application for transport is made via the school, not the council: <a href="https://www.aberdeenshire.gov.uk/roads-and-travel//school-transport/school-transport/">https://www.aberdeenshire.gov.uk/roads-and-travel//school-transport/school-transport/</a> School travel plans are recommended, plus guidance on planning and completed plans: <a href="https://www.aberdeenshire.gov.uk/roads-and-travel/transportation/travel-planning/school-travel-planning/the-school-travel-plan/">https://www.aberdeenshire.gov.uk/roads-and-travel/transportation/travel-planning/school-travel-planning/the-school-travel-plan/</a> Adverse weather webpage: <a href="https://www.aberdeenshire.gov.uk/roads-and-travel/school-transport/adverse-weather/">https://www.aberdeenshire.gov.uk/roads-and-travel/school-transport/adverse-weather/</a> I-Bike project promotion: <a href="https://www.aberdeenshire.gov.uk/roads-and-travel/transportation/travel-planning/school-travel-planning/i-bike-project">https://www.aberdeenshire.gov.uk/roads-and-travel/transportation/travel-planning/school-travel-planning/i-bike-project</a> Park Smart – Safe Parking around Schools

Authority	Notable Variations of Approach
	<p><a href="https://www.aberdeenshire.gov.uk/roads-and-travel/transportation/travel-planning/school-travel-planning/park-smart-campaign/">https://www.aberdeenshire.gov.uk/roads-and-travel/transportation/travel-planning/school-travel-planning/park-smart-campaign/</a></p> <p>Curriculum for Excellence Outcomes and Links in School Travel Planning:  <a href="https://www.aberdeenshire.gov.uk/roads-and-travel/transportation/travel-planning/school-travel-planning/curriculum-for-excellence-outcomes-and-links/">https://www.aberdeenshire.gov.uk/roads-and-travel/transportation/travel-planning/school-travel-planning/curriculum-for-excellence-outcomes-and-links/</a></p> <p>Parental guidance on Aberdeenshire school transport – coronavirus:  <a href="https://www.aberdeenshire.gov.uk/schools/schools-covid-19/school-transport-covid-19/">https://www.aberdeenshire.gov.uk/schools/schools-covid-19/school-transport-covid-19/</a></p> <p>Walking, cycling and driving to school – Coronavirus:  <a href="https://www.aberdeenshire.gov.uk/roads-and-travel/walking-cycling-and-driving-to-school-coronavirus/">https://www.aberdeenshire.gov.uk/roads-and-travel/walking-cycling-and-driving-to-school-coronavirus/</a></p>
Argyll & Bute	<p>School Transport Guide for pupils &amp; parents, including Healthy Alternatives to Vehicle Transportation and Code of Conduct:  <a href="https://www.argyll-bute.gov.uk/sites/default/files/school_transport_guide_revised_april_2021.doc.pdf">https://www.argyll-bute.gov.uk/sites/default/files/school_transport_guide_revised_april_2021.doc.pdf</a></p> <p>Safe Walking Route Guidelines:  <a href="https://www.argyll-bute.gov.uk/sites/default/files/transport-and-streets/roadsafetyforum.pdf">https://www.argyll-bute.gov.uk/sites/default/files/transport-and-streets/roadsafetyforum.pdf</a></p>
Clackmannanshire	<p>High profile Safe Routes to School initiative promoting walking &amp; cycling options:  <a href="https://www.clacks.gov.uk/learning/saferoutestoschool/">https://www.clacks.gov.uk/learning/saferoutestoschool/</a></p> <p>+ pupil and parent information page:  <a href="https://www.clacks.gov.uk/learning/saferoutespupils/">https://www.clacks.gov.uk/learning/saferoutespupils/</a>  <a href="https://www.clacks.gov.uk/learning/saferoutesparents/">https://www.clacks.gov.uk/learning/saferoutesparents/</a></p> <p>Cycling to School / Bikeability Training:  <a href="https://www.clacks.gov.uk/learning/cyclingtoschool/">https://www.clacks.gov.uk/learning/cyclingtoschool/</a></p> <p>School Travel Plans promotion &amp; templates:  <a href="https://www.clacks.gov.uk/learning/schooltravelplans/">https://www.clacks.gov.uk/learning/schooltravelplans/</a></p> <p>Walking Buses promotion:  <a href="https://www.clacks.gov.uk/learning/walkingbuses/">https://www.clacks.gov.uk/learning/walkingbuses/</a></p> <p>School Travel Projects promoting sustainable travel habits:  <a href="https://www.clacks.gov.uk/learning/schooltravelprojects/">https://www.clacks.gov.uk/learning/schooltravelprojects/</a></p> <p>Additional support needs on short term basis where transport is required (e.g. broken leg):  <a href="https://www.clacks.gov.uk/learning/asntransport/">https://www.clacks.gov.uk/learning/asntransport/</a></p> <p>ITT only for ASN over-16s</p> <p>Seatbelt statement – compliance of operators with 2017 Act:  <a href="https://www.clacks.gov.uk/document/6377.pdf">https://www.clacks.gov.uk/document/6377.pdf</a></p>
Dumfries & Galloway	<p>Financial help with transport.  <a href="https://www.dumgal.gov.uk/article/15248/Financial-help-with-school-transport">https://www.dumgal.gov.uk/article/15248/Financial-help-with-school-transport</a></p> <p>Active Travel Strategy - school section:  <a href="https://www.dumgal.gov.uk/article/16715/Active-Travel-Strategy">https://www.dumgal.gov.uk/article/16715/Active-Travel-Strategy</a></p>

Authority	Notable Variations of Approach
Dundee	<p>Travel assistance is provided for secondary-age young people where the catchment school is more than two miles from home and the young person is in receipt of free school meals, otherwise 3 miles.</p> <p><a href="https://www.dundee.gov.uk/sites/default/files/20171020_travel_assistance_policy_updated.pdf">https://www.dundee.gov.uk/sites/default/files/20171020_travel_assistance_policy_updated.pdf</a></p>
East Lothian	<p>Enhanced distance criteria for secondary pupils: "We provide free home to school (HTS) transport for East Lothian pupils who live more than two miles away from their local primary or secondary school."</p> <p><a href="https://www.eastlothian.gov.uk/info/210557/schools_and_learning/12038/home_to_school_transport">https://www.eastlothian.gov.uk/info/210557/schools_and_learning/12038/home_to_school_transport</a></p> <p>Smartcards on designated routes</p> <p><a href="https://www.eastlothian.gov.uk/info/210557/schools_and_learning/12038/home_to_school_transport">https://www.eastlothian.gov.uk/info/210557/schools_and_learning/12038/home_to_school_transport</a></p>
Edinburgh	<p>Enhanced distance criteria: "The Council has the power to provide other assisted travel on a discretionary basis, subject to its budgetary resources and priorities and based on the outcome of travel need assessment by the Travel Allocation Panel."</p> <p>Independent travel training: "The Council will work in partnership with parents, schools and other key agencies to provide appropriate travel training for children as required to aid their transition to adulthood by promoting and supporting independent travel to and from school, wherever feasible."</p> <p>School travel plans: "All schools will be responsible for agreeing and committing to operating school travel plans as part of a whole school approach to supporting a child's health, wellbeing and safety."</p> <p><a href="https://www.edinburgh.gov.uk/downloads/file/26276/assisted-travel-home-to-school-policy-statement">https://www.edinburgh.gov.uk/downloads/file/26276/assisted-travel-home-to-school-policy-statement</a></p>
Falkirk	<p>School Transport – Information for Parents &amp; Pupils booklet:</p> <p><a href="https://www.falkirk.gov.uk/services/schools-education/school-life/docs/school-transport/information/School%20transport%20Info%20for%20parents.pdf?v=202008111312">https://www.falkirk.gov.uk/services/schools-education/school-life/docs/school-transport/information/School%20transport%20Info%20for%20parents.pdf?v=202008111312</a></p> <p>Transport for Pupils with Additional Support Needs – A Guide for Parents/Carers booklet:</p> <p><a href="https://www.falkirk.gov.uk/services/schools-education/additional-support-needs/docs/transport-support/Transport%20for%20pupils%20with%20additional%20support%20needs.pdf?v=202008110957">https://www.falkirk.gov.uk/services/schools-education/additional-support-needs/docs/transport-support/Transport%20for%20pupils%20with%20additional%20support%20needs.pdf?v=202008110957</a></p> <p>Cycling to School I-Bike project:</p> <p><a href="https://www.falkirk.gov.uk/services/schools-education/school-life/cycling-to-school.aspx">https://www.falkirk.gov.uk/services/schools-education/school-life/cycling-to-school.aspx</a></p> <p>School Transport Newsletter:</p> <p><a href="https://www.falkirk.gov.uk/services/schools-education/school-life/docs/school-transport/information/School%20transport%20newsletter%20August%202019.pdf?v=202008111312">https://www.falkirk.gov.uk/services/schools-education/school-life/docs/school-transport/information/School%20transport%20newsletter%20August%202019.pdf?v=202008111312</a></p> <p>Life Skills for Little Ones booklet ref. to independent travel training:</p> <p><a href="https://www.falkirk.gov.uk/services/social-care/disabilities/docs/young-people/Life%20Skills%20for%20Little%20Ones.pdf?v=201906271131">https://www.falkirk.gov.uk/services/social-care/disabilities/docs/young-people/Life%20Skills%20for%20Little%20Ones.pdf?v=201906271131</a></p> <p>Life Skills (Teenagers) ref. to independent travel training:</p>

Authority	Notable Variations of Approach
	<a href="https://www.falkirk.gov.uk/services/social-care/disabilities/docs/young-people/Life%20Skills%20for%20Teenagers.pdf?v=201906271131">https://www.falkirk.gov.uk/services/social-care/disabilities/docs/young-people/Life%20Skills%20for%20Teenagers.pdf?v=201906271131</a>
Fife	<p>Enhanced criteria on distance - one mile primary, two miles secondary; Responsibilities of parents and carers of children and young people who travel to / from school by bus; Walked Routes to Schools assessments &amp; Parents Charter 2018:</p> <p><a href="https://www.fife.gov.uk/kb/docs/articles/education2/schools-in-fife/school-transport">https://www.fife.gov.uk/kb/docs/articles/education2/schools-in-fife/school-transport</a></p>
Glasgow	<p>Enhanced distance criteria for “children and young people who live more than 1.2 miles or more from their local catchment primary school by the shortest suitable walking route and 2.2 miles from their local catchment secondary school by the shortest suitable walking route”.</p> <p><a href="https://www.glasgow.gov.uk/index.aspx?articleid=17882">https://www.glasgow.gov.uk/index.aspx?articleid=17882</a></p> <p>Home to School Guidance Booklet:</p> <p><a href="https://www.glasgow.gov.uk/CHttpHandler.ashx?id=34897&amp;p=0">https://www.glasgow.gov.uk/CHttpHandler.ashx?id=34897&amp;p=0</a></p>
Moray	<p>School Travel Plans</p> <p><a href="http://www.moray.gov.uk/moray_standard/page_47797.html">http://www.moray.gov.uk/moray_standard/page_47797.html</a></p>
Perth & Kinross	<p>If establishment hours are complementary, transport is sometimes arranged to serve more than one school. Split home addresses not recognised. The Council assumes that a responsible adult will be at home to receive the child from school transport. Assumption of adult accompaniment on walking routes. If a pupil moves home address at any time during the school session, a new application for transport should be made to allow entitlement to free transport to/from their new address to be assessed.</p> <p><a href="https://www.pkc.gov.uk/media/17475/Travel-Policy-for-Schools/pdf/Home_to_School_Transport_Entitlement.pdf?m=636111621534000000">https://www.pkc.gov.uk/media/17475/Travel-Policy-for-Schools/pdf/Home_to_School_Transport_Entitlement.pdf?m=636111621534000000</a></p> <p>Covid-19 updates for general school transport:</p> <p><a href="https://www.pkc.gov.uk/media/46284/COVID-19-School-Transport-Information/pdf/COVID-19_School_Transport_Information_(Updated).pdf?m=637342109702770000">https://www.pkc.gov.uk/media/46284/COVID-19-School-Transport-Information/pdf/COVID-19_School_Transport_Information_(Updated).pdf?m=637342109702770000</a></p> <p>Covid-19 updates for ASN school transport:</p> <p><a href="https://www.pkc.gov.uk/media/46288/COVID-19-ASN-Transport-Guidance/pdf/COVID-19_ASN_Transport_Information_(Updated).pdf?m=637345478568630000">https://www.pkc.gov.uk/media/46288/COVID-19-ASN-Transport-Guidance/pdf/COVID-19_ASN_Transport_Information_(Updated).pdf?m=637345478568630000</a></p> <p>Operators Code of Conduct booklet:</p> <p><a href="https://www.pkc.gov.uk/media/46286/Educational-Transport-Operators-Code-of-Conduct-2020/pdf/Code_of_Conduct_2020.pdf?m=637324165554070000">https://www.pkc.gov.uk/media/46286/Educational-Transport-Operators-Code-of-Conduct-2020/pdf/Code_of_Conduct_2020.pdf?m=637324165554070000</a></p> <p>Travelling to School booklet:</p> <p><a href="https://www.pkc.gov.uk/media/46285/Information-for-Parents-Travelling-to-School-2020/pdf/Travelling_to_School_2020.pdf?m=637324165018800000">https://www.pkc.gov.uk/media/46285/Information-for-Parents-Travelling-to-School-2020/pdf/Travelling_to_School_2020.pdf?m=637324165018800000</a></p> <p>Independent travel training programme but not clear that this is available to non-adults:</p> <p><a href="https://www.pkc.gov.uk/media/26716/ITT-Brochure-July-2014/pdf/ITT_Brochure_July_2014">https://www.pkc.gov.uk/media/26716/ITT-Brochure-July-2014/pdf/ITT_Brochure_July_2014</a></p>

Authority	Notable Variations of Approach
Renfrewshire	<p>Enhanced distance criteria for both primary and secondary pupils: "Home to school transport will be provided if your child: lives more than one mile away from his or her local primary school by the shortest safe walking route; lives more than two miles away from his or her local secondary school by the shortest safe walking route."</p> <p><a href="https://www.renfrewshire.gov.uk/article/3486/Home-to-school-transport">https://www.renfrewshire.gov.uk/article/3486/Home-to-school-transport</a></p> <p>Website includes eligibility checker between each school and street in the district:</p> <p><a href="https://www.renfrewshire.gov.uk/media/9017/Transport-Eligibility-Address-List-2018/pdf/Transport_Eligibility_Address_List_20182.pdf?m=1546597173353">https://www.renfrewshire.gov.uk/media/9017/Transport-Eligibility-Address-List-2018/pdf/Transport_Eligibility_Address_List_20182.pdf?m=1546597173353</a></p>
Scottish Borders	<p>Young Scot card promoted</p> <p><a href="https://young.scot/get-informed/national/save-money-on-travel">https://young.scot/get-informed/national/save-money-on-travel</a></p> <p>Transport-specific ASN guidance booklet</p>
South Ayrshire	<p>Active Travel Strategy but no refs to transport to school:</p> <p><a href="https://south-ayrshire-active-travel-strategy-public-swecouk.hub.arcgis.com/">https://south-ayrshire-active-travel-strategy-public-swecouk.hub.arcgis.com/</a></p>
South Lanarkshire	<p>Enhanced distance criteria primary pupils: "We provide school transport for primary school pupils who live one mile or more from their catchment primary school by the shortest safe walking route." And secondary pupils: "We provide school transport for secondary school pupils who live two miles or more away from the catchment secondary school by the shortest safe walking route."</p> <p><a href="https://www.southlanarkshire.gov.uk/info/200186/primary_school_information/545/school_transport">https://www.southlanarkshire.gov.uk/info/200186/primary_school_information/545/school_transport</a></p> <p>Safe walking route directory</p> <p><a href="https://www.southlanarkshire.gov.uk/directory/147/safe_walking_routes">https://www.southlanarkshire.gov.uk/directory/147/safe_walking_routes</a></p>
Stirling	<p>Policy clarifies split of responsibility between education dept. and transport unit. Enhanced distance criteria for secondary pupils: "Free home to school transport will be provided to children and young people where the distance from home to school exceeds 2 miles by the shortest available safe route."</p> <p><a href="https://stirling.gov.uk/learning-education/schools/school-travel-trips/cycling-walking-to-school/">https://stirling.gov.uk/learning-education/schools/school-travel-trips/cycling-walking-to-school/</a></p> <p>Seat Belt Safety webpage:</p> <p><a href="https://stirling.gov.uk/learning-education/schools/school-travel-trips/seat-belt-safety/">https://stirling.gov.uk/learning-education/schools/school-travel-trips/seat-belt-safety/</a></p> <p>Safe Routes to School initiative promoting walking &amp; cycling options:</p> <p><a href="https://stirling.gov.uk/learning-education/schools/school-travel-trips/cycling-walking-to-school/">https://stirling.gov.uk/learning-education/schools/school-travel-trips/cycling-walking-to-school/</a></p> <p>Secondary School Bus Timetables:</p> <p><a href="https://stirling.gov.uk/learning-education/schools/school-travel-trips/secondary-school-bus-timetables/">https://stirling.gov.uk/learning-education/schools/school-travel-trips/secondary-school-bus-timetables/</a></p>
West Lothian Council	<p>Enhanced distance criteria for both primary and secondary pupils: 1.5 miles or over for primary children and 2 miles or over for secondary children attending their catchment school:</p> <p><a href="https://www.westlothian.gov.uk/article/32237/School-Transport-Policy">https://www.westlothian.gov.uk/article/32237/School-Transport-Policy</a></p> <p>School Transport Covid-19 Guidance:</p>

Authority	Notable Variations of Approach
	<a href="https://www.westlothian.gov.uk/article/64067/School-Transport-Covid-19-Guidance">https://www.westlothian.gov.uk/article/64067/School-Transport-Covid-19-Guidance</a> and <a href="https://www.westlothian.gov.uk/article/64075/School-Transport-Parent-Carer-Pupil-guidance">https://www.westlothian.gov.uk/article/64075/School-Transport-Parent-Carer-Pupil-guidance</a> Covid-19 Guidance for operators of school transport routes: <a href="https://www.westlothian.gov.uk/article/64076/Operator-Guidance">https://www.westlothian.gov.uk/article/64076/Operator-Guidance</a> School Bus Route and Timetable Information 2020/21: <a href="https://www.westlothian.gov.uk/schoolbuses">https://www.westlothian.gov.uk/schoolbuses</a>

2.9.3 By comparison, THC's website features:

- General page:  
[https://www.highland.gov.uk/info/878/schools/12/school\\_transport](https://www.highland.gov.uk/info/878/schools/12/school_transport)
- Online school transport application portal:  
[https://self.highland.gov.uk/service/School\\_transport?noLoginPrompt=1&accept=yes&consentMessageIds\[\]=89](https://self.highland.gov.uk/service/School_transport?noLoginPrompt=1&accept=yes&consentMessageIds[]=89)
- Printable version of above:  
[https://www.highland.gov.uk/downloads/file/81/school\\_transport\\_application\\_form](https://www.highland.gov.uk/downloads/file/81/school_transport_application_form)
- School Transport Policy download:  
[http://www.highland.gov.uk/downloads/file/209/school\\_transport\\_policy](http://www.highland.gov.uk/downloads/file/209/school_transport_policy)
- Appeal details:  
[https://www.highland.gov.uk/info/878/schools/12/school\\_transport/2](https://www.highland.gov.uk/info/878/schools/12/school_transport/2)
- Benefits related to school transport:  
[https://www.highland.gov.uk/directory\\_record/22132/free\\_school\\_transport](https://www.highland.gov.uk/directory_record/22132/free_school_transport)
- School Travel Plan guidance:  
[https://www.highland.gov.uk/downloads/file/12708/school\\_travel\\_plan](https://www.highland.gov.uk/downloads/file/12708/school_travel_plan)
- Go for It – Active Lifestyle promotion:  
[https://www.highland.gov.uk/info/20005/roads\\_and\\_pavements/87/road\\_safety/4](https://www.highland.gov.uk/info/20005/roads_and_pavements/87/road_safety/4)
- Bikeability Scotland:  
[https://www.highland.gov.uk/info/20005/roads\\_and\\_pavements/87/road\\_safety/9](https://www.highland.gov.uk/info/20005/roads_and_pavements/87/road_safety/9)
- Safer Routes to School:  
[https://www.highland.gov.uk/info/20005/roads\\_and\\_pavements/87/road\\_safety/3](https://www.highland.gov.uk/info/20005/roads_and_pavements/87/road_safety/3)
- COVID-related

- ◆ measures and advice:  
[https://www.highland.gov.uk/info/878/schools/930/back\\_to\\_school/6](https://www.highland.gov.uk/info/878/schools/930/back_to_school/6)
- ◆ School Transport protocol:  
[https://www.highland.gov.uk/downloads/file/23433/protocol\\_for\\_school\\_transport](https://www.highland.gov.uk/downloads/file/23433/protocol_for_school_transport)
- ◆ Information on routes:  
[https://www.highland.gov.uk/downloads/file/22774/school\\_bus\\_routes\\_august\\_2020](https://www.highland.gov.uk/downloads/file/22774/school_bus_routes_august_2020)

2.9.4 The Walking Routes approach taken by THC is that recommended by Road Safety GB (which advocates use of a tool compiled by Active Streets <https://activestreeets.uk/>). Many other authorities use the West of Scotland Road Safety Forum approach.

## 2.10 Ombudsman Reports

2.10.1 The Scottish Public Services Ombudsman (SPSO) hears escalated complaints and grievances in situations where contractors and local authorities have themselves failed to resolve issues from service users. The SPSO findings form a legal judgement when complaints are upheld and recommendations are made – however, some Ombudsman hearings are highly individualised and may not have any wider bearing on policy or practice elsewhere. Recommendations are sometimes made even where complaints are not upheld. All recommendations, however, should be taken into account when reviewing policy and practice. The following cases specific to school transport included recommendations by SPSO:

- **Comhairle nan Eilean Siar** (2012) – Complainant’s appeal against measurement process was not upheld but Ombudsman “felt that it was not clear that the committee taking the decision could seek further clarification during the appeal meeting.” An amendment to council’s stated process was recommended making clear that further clarification could be sought;
- **West Lothian Council** (2013) – School not responsible for controlling children’s behaviour on a school bus – that is a parental responsibility – complaint not upheld [*Following subsequent guidance on school transport safety, this might have a slightly different outcome now*<sup>7</sup>];

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<sup>7</sup> E.g. <https://www.gov.scot/publications/school-transport-guidance-2021/pages/4/>

- **Comhairle nan Eilean Siar** (2013) – Upheld that the council did not act reasonably and correctly when it withdrew school transport. Complainant was told they could not complain as the decision of the sub-committee was final. SPSO found that the appeal sub-committee that took the decision did not have full, accurate and relevant information about the route in question. Additionally, as there was no statutory right of appeal and complainant was not signposted to SPSO as they were entitled. It was recommended that the council review their policy wording to reflect advice on signposting for internal appeals procedures;
- **Shetland Islands Council** (2015) – Shared parental custody at two different addresses – confirmed that Council under no requirement to provide transport between school and multiple addresses;
- **Dumfries & Galloway Council** (2015) – Council policy was to only provide transport at term start and end for out of area residential placements. Complainant wanted transport for mid-term contact visits. SPSO upheld that Council had acted in line with its policy and had considered the request properly and rejected the complaint. However, Council had no records of its decision-making other than correspondence. SPSO required Council to make and implement a plan for record-keeping (e.g. File Notes of decisions) to provide an audit trail;
- **South Lanarkshire** (2015) No evidence that the Council misled complainant about transport eligibility when her daughters moved school at her request. All council publications were consistent that transport would not be provided in these circumstances;
- **Fife Council** (2016) – Complainant considered walking route was unsafe due to lack of lighting and low winter gritting priority. Fife had used an 'English' assessment methodology that did not consider lighting significant. But Scottish guidance is very flexible. SPSO therefore considered use of the methodology reasonable and rejected the complaint. However, the Council's complaints handling was at fault – failed to provide clear information and the officer handling the complaint was the same one who had made the original decision;
- **Angus Council** (2017) – Complainant felt that the council had unreasonably failed to provide their school transport drivers with child protection awareness training. The council's policy was that child protection awareness training was only a requirement for bus drivers who transport children with additional needs. SPSO upheld the complaint and Angus Council revised its policy to ensure all drivers received the training;



- **Shetland Islands Council** (2017) – Complainant requested that a route be re-assessed. The route assessment report was still outstanding a year later. Complaint was upheld and SPSO recommended that the council apologise for the long delay in reassessing the route and for the poor complaints handling and general, its level of customer service and offer an apology that meets the standard set out in the SPSO’s guidance on apology which can be found at [www.spsso.org.uk/leaflets-and-guidance](http://www.spsso.org.uk/leaflets-and-guidance).

2.10.2 The case at Angus Council is particularly pertinent to THC given its lack of a consistent approach to driver training. THC’s DPS / Framework states in Appendix B that “contractors must comply with principles of child protection as issued by The Authority from time to time and must notify any concerns about child safety or welfare to the Deputy Authority’s Representative, using a method which ensures confidentiality.” This position does not adequately ensure that a consistent level of training is in place; in practice THC has not proactively pursued protection training and the phrase “principles of child protection” falls short of the expectations of the SPSO in the Angus case.

2.10.3 *National Guidance for Child Protection in Scotland 2014* states that local protection committees “should have an overview of the training needs of all staff involved in child protection activity, including...staff who have regular contact with children as part of their job, for example school bus drivers. These staff are well placed to recognise signs of abuse and raise concerns about a child’s wellbeing and should understand their responsibility to share such concerns appropriately.”

## **2.11 General Issues around School Transport Policy & Practice**

2.11.1 The following issues were raised in interview with David Summers (DS) (Principal Transport Officer):

- Parental grants are limited to mileage reimbursements (and referred to as such). There are a significant number of these – in the past there had been some suspected abuse of this system (overlap with parents’ regular commuting journeys);
- Managing Expectations - In general, THC team is felt to manage expectations well and there is no great discrepancy between what the policy promises and what is delivered to pupils and parents. The biggest challenges come with pupils with a high level of need – THC goes a long way to meeting expectations. Small number of examples where solutions could not be found (in one case, the mother provided the transport);

- Reviews and Appeals – this is handled by a panel of Council Members and several years ago the then Chair took a severe approach (allowing minimal scope for appeals to be upheld). DS felt the system was good in theory but poor in execution. A new system was introduced in 2010 where initial appeals were handled by officers and only escalated to members when required. Only one appeal has been made on ASN grounds, all others on safety (below entitled distance). There have been small numbers of appeals, around 2 or 3 a year and under half of these are not sustained;
- Cycling – a more proactive approach is being considered as a trial, Cycling Scotland and Sustrans are interested and would provide support;
- Travel Planning in Schools – linked to Safer Routes to School programme. We were not able to ascertain how many schools have actually produced plans. DS feels some routes could be upgraded as safe cycle routes;
- Historic Arrangements – in terms of historic commitments, there have been a small number for whom transport has been continued after a change in catchment (such as an RC school in Fort William). Generally, this is for pupils attending school at the time of the change and younger siblings; and
- DS highlighted a practical difficulty for the authority where drivers had failed to properly check travel passes and failed to collect fares – this raised an issue of who would take the burden of lost revenue (registered services or privilege passes) which could potentially come back on THC.

## 3.1 Introduction

- 3.1.1 This chapter covers the area of home to school transport procurement. The purpose of the chapter is to:
- Outline the current approach to procurement and
  - Consider the various factors that might influence decisions to seek efficiencies in the future.
- 3.1.2 THC faces considerable challenges in its provision of school transport due to spatial factors and the geographical distribution of residents and schools. The market of operators (especially bus and minibus operators) is limited and the competitive forces that can be played to drive down costs in a tendering situation elsewhere are not always available – over 30% of THC tenders issued produced only one bidder. This limits THC’s options and frustrates best-value efforts.
- 3.1.3 The dearth of sizeable towns apart from Inverness and the extreme rurality of much of the Highland area means that a high proportion of pupils are eligible for transport provided by THC. There are just under 9,000 pupils for whom transport is provided at a cost of over £13m pa – though the impact of COVID-19 saw this rise to £14.5m. At the Pre-COVID rate, this averages at £1,444 per pupil per year, or £7.60 per day, although within this figure are wide variations between routes.
- 3.1.4 In terms of transport management, THC organises planning and procurement to serve travel needs of pupils into three geographical areas as follows:
- **East** (Dingwall, Fortrose, Charleston, Inverness High, Inverness Royal Academy, Millburn, Culloden, Nairn, Grantown, Kingussie, Alness, Invergordon, Tain, Glen Urquhart and Kilchuimen) – 4,287 pupils
  - **North** (Thurso, Wick, Farr, Kinlochbervie, Ullapool, Golspie, Dornoch, Tain, Invergordon, Alness and Dingwall) – 2,266 pupils
  - **West** (Glen Urquhart, Kilchuimen, Gairloch, Plockton, Portree, Mallaig, Lochaber, Ardnamurchan and Kinlochleven) – 2,186 pupils .

## 3.2 Budget

- 3.2.1 The financial commitment to passenger transport as of 2020 / 2021 is detailed in Table 3 below. This represents the full extent of THC’s passenger transport costs and includes both contracted and grant-aided services. To this can be added the in-house bus fleet with net costs of circa £125,000 p.a.

**Table 3: Status of THC Financial Commitment to Passenger Transport based on 'Budget Projection 2020/21' Spreadsheet**

Category	Type	East	North	West	Predicted Outturn	Budget	Variance
Education	General (Mainstream)	£3,790,983	£2,405,010	£2,395,147	£8,591,140	£6,976,618	£1,614,522
	ASN	£882,293	£287,074	£438,983	£1,608,350	£1,331,151	£277,199
	Gaelic	£375,735	£59,248	£45,902	£480,886	£348,643	£132,243
	Demand-led	£38,548	£1,102	£0	£39,650	£138,876	-£99,226
Education Sub-Total		<b>£5,087,559</b>	<b>£2,752,434</b>	<b>£2,880,033</b>	<b>£10,720,026</b>	<b>£8,795,288</b>	<b>£1,924,738</b>
Public*	Bus contracts				£7,164,059	£6,857,684	£306,375
	Ferry contracts				£253,692	£230,096	£23,596
	Community Transport grants (incl. training & repairs)				£366,000	£366,000	£0
	Concessionary Fares				£54,312	£102,569	-£48,257
Public Sub-Total					<b>£7,838,063</b>	<b>£7,556,349</b>	<b>£281,714</b>
Grand Total					<b>£18,558,089</b>	<b>£16,351,637</b>	<b>£2,206,452</b>

\* The figure for public transport subsidy includes an estimated £4,460,000 that is actually for what are primarily home to school transport routes but which are absorbed in the public transport budget as they are operated as registered local services open to the public. If the costs of these were fully allocated to Education, the total budget line for Education would be £13,255,288 and that for public transport would be £3,096,349.

Subcategory figures are approximate due to the difficulty of consistent matching/allocation between pupil data and accounts e.g. pupils with ASN may be travelling on a mainstream bus or attending Gaelic medium education.

- 3.2.2 To meet its duties to provide travel support to entitled pupils, the PTU utilises three main approaches:
- a) Transport services commissioned from external operators. These include a mixture of:
- ◆ Dedicated services using a variety of vehicle sizes provided by contracted and professionally licensed bus, coach, taxi, and private hire car operators plus a small number of non-commercial community-based operators operating under a regulated permit system and some private individuals who only undertake trips for THC and are therefore exempt from licensing. These services are not open to the public. Spare places may be made available to non-entitled pupils on a charged-for 'privilege lift' basis.
  - ◆ Public bus services that serve schools and colleges. These services are open to the public, including non-entitled pupils, but a main function is to provide a service to entitled pupils.
  - ◆ Purchase of bus passes to be used on existing bus services that are provided commercially by operators.
  - ◆ A small number of tickets, mainly season tickets, for travel between identified stations on the railway network
- b) Provision made using an in-house service utilising a small fleet of 14 minibuses. This is primarily deployed on a tactical basis where there is limited commercial provision.
- c) Grants made to parents or indeed to older students themselves to pay for the use of their own forms of transport. These mainly involved making mileage payments to parents to transport their children to and from school using a family car.
- 3.2.3 Table 4 below shows the approximate allocation of activity between these three approaches, including a separation between pupils on services associated with mainstream schools and those associated with schools or units provided for pupils with ASN.

**Table 4: School Transport Delivery Modes**

	PTU Area Office			TOTAL
	East	North	West	
Pupils on routes*	4287	2266	2186	8739
Escorts/PSAs	56	6	12	74
Total Passengers	4343	2272	2198	8813
WITHIN ABOVE:				
<b>CONTRACTED</b>				
Pupils on contracted ASN Routes	213	63	67	343
Escorts on contracted ASN Routes	51	5	8	64
Pupils on contracted other routes	4002	2078	2068	8148
Escorts on contracted other routes	0	0	2	2
<b>IN-HOUSE</b>				
ASN Pupils on In- House	2	41	0	43
Escorts on In-House ASN Routes	1	1	0	2
Other Pupils on In-House	23	51	16	90
Escorts on In-House Other Routes	2	0	2	4
<b>PARENTAL</b>				
Parental provision for ASN	2	8	4	18
Escorts on parental ASN provision	0	0	0	1
Parental provision for other	40	25	31	101
Escorts on parental other	1	0	0	1

\* North Area had 191 passengers unallocated to a route. West Area had 5 passengers allocated to #N/A

- 3.2.4 Highland has a lower proportion of ASN pupils compared to most other Scottish authorities – this reflects the more dispersed nature of its population and the high number of pupils of school age who live beyond the statutory walking distances and who are therefore eligible for travel support to enable them to attend mainstream education. This is the primary reason for the significant size of the school travel budget in Highland relative to its population size.
- 3.2.5 We have looked at the costs per pupil transported by vehicle type as well as the daily costs faced by THC by vehicle capacity and accessibility. We have also benchmarked THC transport expenditure against that faced by other rural Scottish authorities. The results show that THC comes within the range of costs that can be reasonably expected. For example, the Table below compares unit transport expenditure in 2019/20 for pupils on the school roll, using Scottish Local Government Finance Statistics.

**Table 5: Scottish Rural Authorities: School Transport Expenditure: 2019/20**

<b>Authority</b>	<b>Cost of Transport per Pupil on Roll</b>
Angus	£211
Stirling	£228
Dumfries & Galloway	£255
Fife	£286
Moray	£321
Highland	£331
Scottish Borders	£354
Perth & Kinross	£467
Argyll & Bute	£467
Aberdeenshire	£496
Orkney Islands	£847
Shetland Islands	£883
Nan-Eilean Siar	£983

- 3.2.6 As with all such statistics there are a variety of caveats. For example, not all authorities have the additional complexity of Gaelic Medium education and there are differences in cost allocation between school and public transport where one service serves both purposes. But they do not suggest that THC is an outlier, nor do they identify particular areas of costs that would imply that focusing on a small number of actions could deliver the cost savings required.
- 3.2.7 Instead we suggest that there is a long list of actions, covering both demand and supply management, each of which can be expected to contribute in a small way to savings targets.
- 3.2.8 Table 6 below shows our estimates of the average unit costs achieved across the Highland area. This also shows the scale of the commissioning operation. Note that this Table is based upon contract award data so is slightly out of alignment with the budget figures in Table 3 above.

**Table 6: School Travel Unit Cost Estimates – 2020/2021 projected data**

Type	Routes	Cost	Average Contract Cost	Pupils	Escorts	Places	Average Cost per Place
Mainstream contracts*	234	£11,993,896	£51,256	8,148	2	8150	£1,472
ASN Contracts <sup>+</sup>	91	£1,192,913	£13,109	343	64	407	£2,931
Parental <sup>+^</sup>	87	£181,478	£2,086	87	1	88	£2,062
In-house <sup>^</sup>	16	£161,153	£10,072	133	6	139	£1,159
All	428	£13,529,440		8,711	73	8,784	£1,540

\* "Mainstream" includes closed door contracted bus, minibus and taxi, school bus contracts open to the public and some miscellaneous rail and ferry payments

+ For parental, this excludes parents accompanying their children on mainstream bus.

^ For in-house and parental, we have not separated out ASN pupils as the numbers of ASN pupils carried are too small to be significant

3.2.9 In contrast to England, up to date comparative data for Scotland is hard to come by because of the different financial reporting requirements. A relatively recent (2019) and helpful document setting out research and analysis into school transport cost pressures was produced by the Local Government Association <https://www.local.gov.uk/understanding-drivers-rising-demand-and-associated-costs-home-school-transport> However, this only covers English authorities.

3.2.10 Two sources of comparative data that cover the different countries and regions within the UK are:

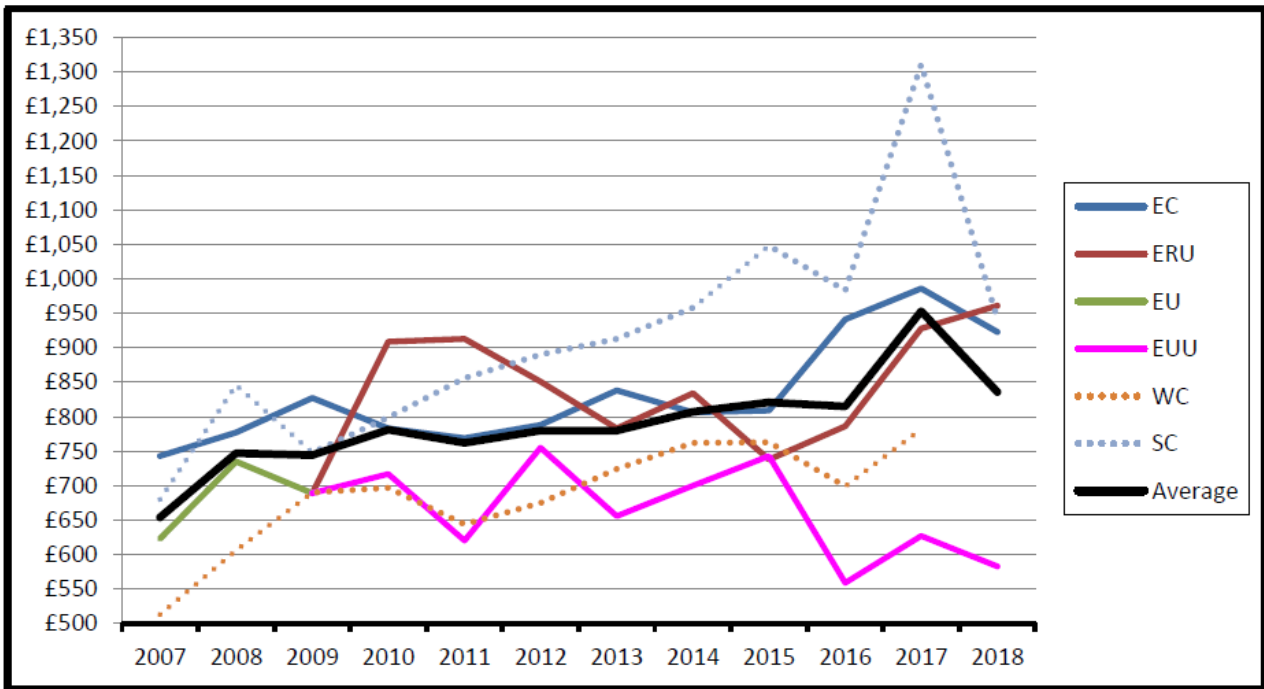
- The Association of Transport Coordinating Officers (ATCO) Passenger Transport Survey
- School Transport Matters – a periodic survey by STC, a transport consultancy.

Both rely on survey responses directly from local authority transport teams and are inevitably dependent upon how many and which authorities responded. The volatility in the trends for Scotland in Figure B below directly reflects a change in the responding authorities between 2016 and 2018.

3.2.11 It can be seen that unit costs for mainstream transport are generally higher than elsewhere in Great Britain reflecting greater rurality. The figures for THC are above those in the ATCO table but we believe that this reflects the lack of data in the ATCO survey from Scottish rural authorities.

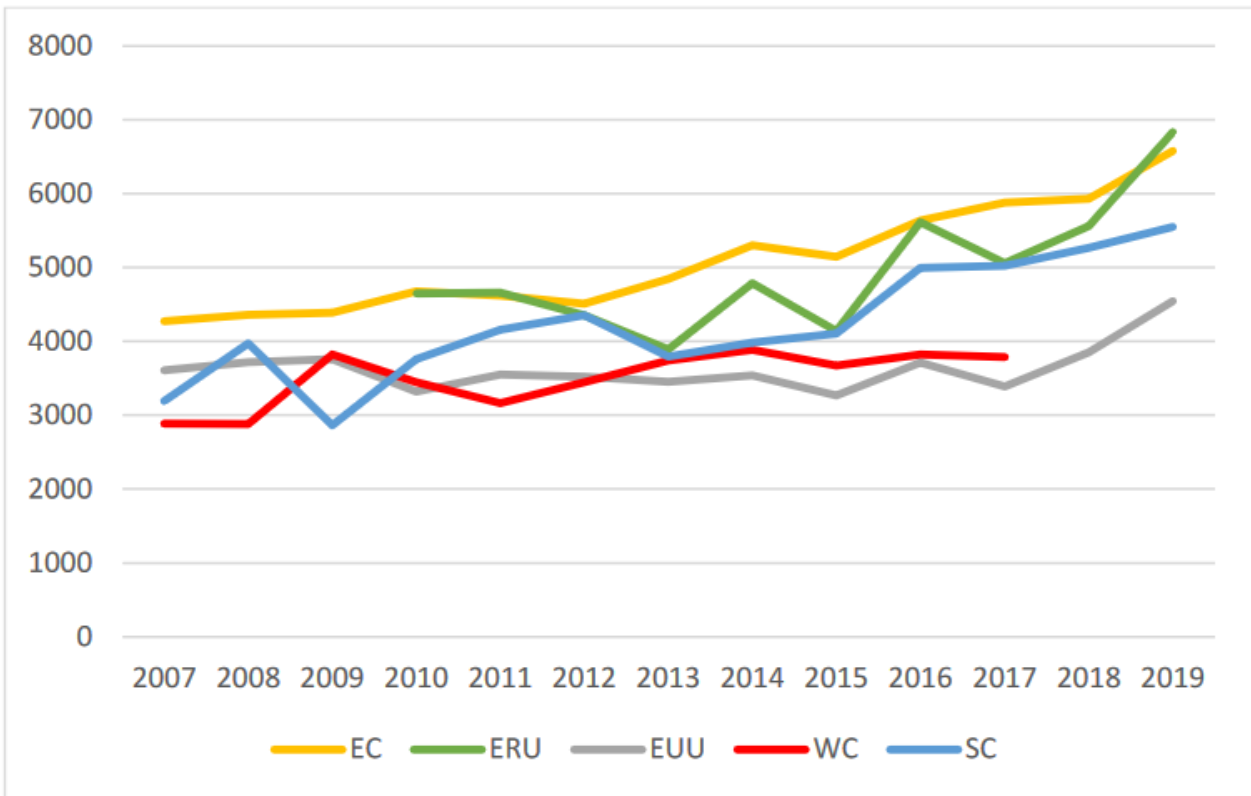


**Figure B: Trends in Expenditure per Pupil on Mainstream Transport (Source = ATCO Survey 2018)**



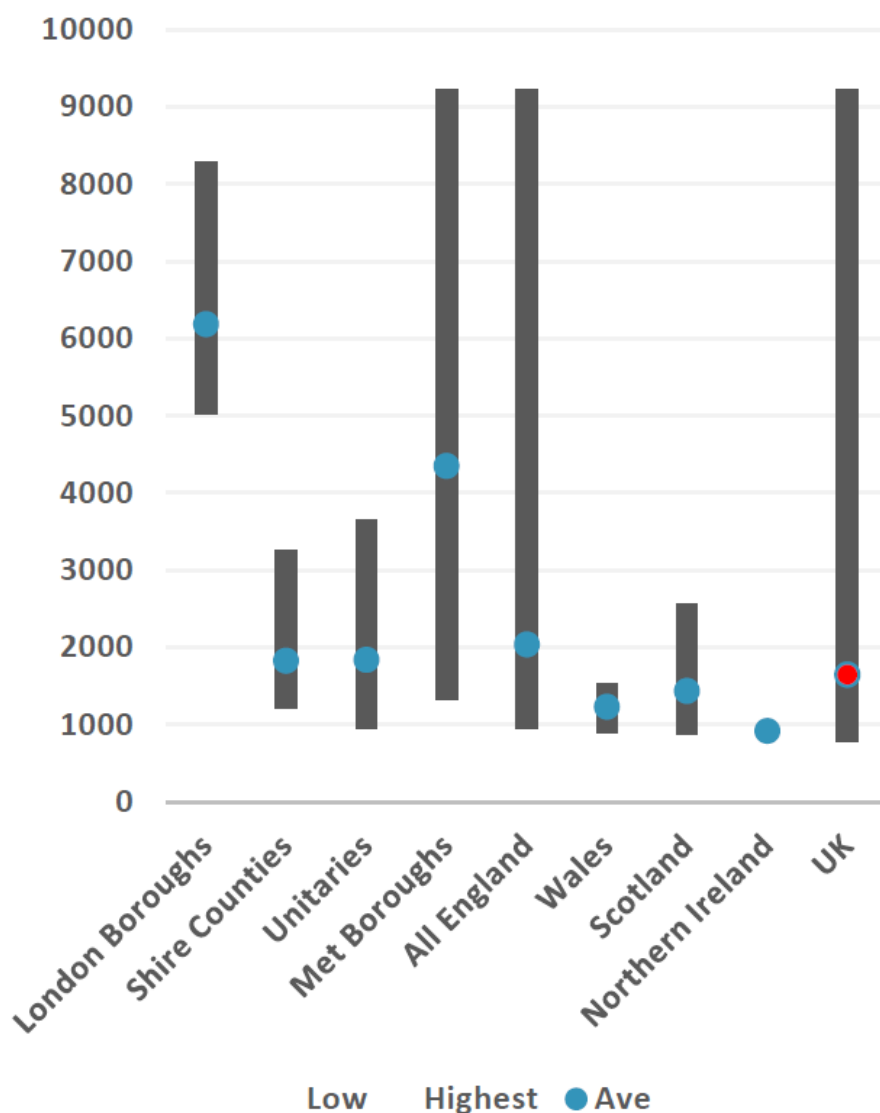
EC = English Shire Counties; ERU = English Rural Unitaries; EU = average Unitary, EEU = English Urban Unitaries; WC = Welsh Councils and SC = Scottish Councils

**Figure C: Trends in Expenditure per Pupil on ASN/SEN Transport (£) (Source = ATCO Survey 2019)**



- 3.2.12 By contrast, the THC unit costs for ASN transport are very significantly below those reported in the ATCO survey.
- 3.2.13 The last School Transport Matters survey was updated in 2018. This concluded that: "Overall, the average cost of providing transport for pupils in the UK is approximately £1,600 per year."

**Figure D: Range of Annual Unit Costs per Pupil (Source = School Transport Matters 2018)**



- 3.2.14 Taking into account the very rural nature of Highland which inexorably leads to longer journeys and therefore a requirement to pay for more staff time per journey (driver and passenger assistant costs make up some 60% of the cost of school transport), the limited comparative data suggests that costs achieved by THC are reasonable.
- 3.2.15 The issue arises where the budget(s) for school transport should be held and managed – whether with Education or Transport. The location should reflect the ability to take decisions that impact on costs. These cost decisions are

those which cover demand management on the one hand and supply-side costs on the other.

- 3.2.16 Where there is little discretionary demand, as is the case with mainstream school transport, it makes sense for budget management to be linked with supply-side costs as this will be the key means of controlling costs. This is particularly supported by the overlap between school buses and public bus services commissioned by THC. These are issues that come within the transport remit and that require a corporate viewpoint. Eligibility for mainstream school transport is primarily a matter of following rules about catchment and walking route distances, so it is easy for Education to delegate this function to Transport. A main area of 'discretion' is about whether a route is 'safe' – again this falls clearly within Transport's professional expertise and they also have means (highway investment) to turn an 'unsafe' route into a 'safe' one. It can be seen that there is little that Education can do to influence the costs, but that Transport has several tools at its disposal. This is why budget management should sit with Transport.
- 3.2.17 However, where there is considerable demand discretion and fewer supply-side tools, then many authorities will locate school transport budget management on the demand-side i.e. with Education. It is certainly the case that school transport for children with ASN involves discretion in both eligibility for THC travel support and the type of travel support that is appropriate. These decisions require a case by case understanding of individual pupils' needs, liaising with the schools, child psychologists, occupational therapists and other clinical professionals. The tools available to Transport to manage the resulting supply-side costs are more limited. Once a decision is made, for example, that a child has to travel alone or within strict journey-time limits, the opportunities to seek savings through logistical efficiency are limited – the Transport Unit either has to deliver the service with in-house resources or go out to the market. This suggests that the budget for ASN school transport should sit with Education as their staff have the greatest influence on the cost outcome.
- 3.2.18 Having set out the above, we have observed over the past 30 years that when faced with a mismatch between the school transport budget and the outcome spend, authorities regularly respond by removing the budget from Transport and placing it with Education or vice versa. In some cases we have observed it transfer backwards and forwards every five to seven years. Whilst the initial transfer may have a savings effect by forcing new staff to look at arrangements with fresh eyes, it is clear that the critical issue is not where it is located but how it is managed. Both sides have an important role to play and this needs to be undertaken jointly, within an agreed structure for sharing cost information and decisions, as proposed in the previous section. For example, ASN transport and travel support decisions should always include consideration of the costs of alternatives.

- 3.2.19 Clearly, there needs to be continuous pressure to obtain best value. But there needs to be an analytic framework to identify where cost reduction decisions can be made, as well as to predict where budget pressures will be found. The objective is to create a 'no surprises' environment as regards budget management. This suggests an approach to budget creation by developing a build-up model that contains both demand-side and supply-side elements. At a simple level the cost of transport will change if the number of pupils or students who are assessed as eligible for travel support changes; similarly, it will change if the cost of travel resources changes, either by external forces (e.g. government raising the national living wage) or THC actions (e.g. more efficient schedules). Build-up cost models are not an excuse to avoid facing up to financial constraints facing the authority (we need to save £X thousand) – they are intended to create a disaggregated model which makes it easier to identify the individual areas where current arrangements should be challenged.

### **3.3 Corporate Procurement Strategy & Structure**

- 3.3.1 Highland Council participates in a joint procurement strategy along with Aberdeenshire Council (AC) and Aberdeen City Council (ACC). *Joint Procurement Strategy (Aberdeen City Council, Aberdeenshire Council and The Highland Council) 2017 – 2022*: "This Joint Procurement Strategy sets out the procurement objectives and actions for 2017 through to 2022 and reflects on both national and local policies and priorities. [The] strategy will support the participating authorities in achieving their commercial performance targets and will contribute to securing sustainable financial savings and contribute to the local and national agenda, whilst developing and strengthening strategic partnerships between and beyond the participating Councils across all internal services and external business sectors. [It] is aimed at ensuring all three Councils procure the goods, services and works it needs in the most economically advantageous manner. This recognises the importance of a procurement strategy towards meeting all the Councils statutory duty of best value."
- 3.3.2 The Joint Procurement Strategy is implemented through a delegated staff structure. THC has produced a draft Commodity Profile and Sourcing Strategy for the Provision of Passenger Transport (principally School and Public Transport) 2020. This was under discussion with the Resources Governance Board when many activities were suspended on the outbreak of the Covid-19 pandemic. Although not formally approved, its principles, including the adoption of a Dynamic Purchasing System, have been followed. THC also produces an Annual Procurement Report which details its current contracts, including education transport.

## 3.4 Procurement Approach

- 3.4.1 The Highland Council's procurement of home to school transport is concerned with engaging transport operators to deliver against its statutory obligations to provide transport for qualifying pupils. A portion of ASN pupils' and others' travel needs are provided by THC's in-house fleet and fall outside of the procurement regime – see separate chapter on Operations. THC adopted a Dynamic Purchasing System (DPS) in 2020. Before this, there was a non-electronic framework in place. The majority of current contract holders were engaged via the previous framework before the DPS was introduced – although the procurement method is different, much of the terms & conditions and specification is identical.
- 3.4.2 For some years now, contracts over £50,000 have been advertised on Public Contracts Scotland (PCS-Tender). Contracts which are less than £50,000 can be awarded by authorised staff against three quotations without their having being advertised. The PCS-Tender process includes a limited amount of automatic evaluation and some done manually on-line, although not all questions can be evaluated without specific staff attention.

## 3.5 DPS Process

- 3.5.1 Operators are invited to be included in the DPS which follows two stages:

### Stage One

- a) DPS calls for competition to join DPS – this is done on line via PCS.
- b) Suppliers express interest on PCS and are granted access to documentation on PCS-T.
- c) Response is submitted by suppliers – they are given 30 days to respond to the initial call for competition and submissions are sealed for 30 days to allow all interested suppliers to complete the required information before Council is given access to open submissions.
- d) Unsealed DPS applications are then opened for supplier for the remaining 9 years 11 months. These can be evaluated upon submission to allow suppliers to join or resubmit before further mini-competitions advertised.
- e) Evaluations by Council are completed.
- f) 10 working days notification is given to all suppliers if they have been successful or need to self-cleanse (if not supplier to self-cleanse and repeat stage c to e). Successful bids to Stage One remain valid for 10 years.

### Stage Two

- g) Mini Competitions are created and advertised within PCS-T (Only suppliers identified within specific lot are invited).
- h) Suppliers respond if desired.
- i) Council evaluates submissions.
- j) Notification to supplier - Contract Award.
- k) Award Notice given via PCS.
- l) Stage Two repeated when Mini-competition advertised for different lots.

3.5.2 Stage One response – bidder must complete:

- Standardised Statements – as required under European Single Procurement Document (Scotland) (ESPD): 4B minimum insurance cover, 4C experience, staff qualifications and fleet capability, 4D satisfactory emissions when tested;
- Non-disclosure & correspondence information document;
- Licence and fleet holdings - for information only, THC requests bidder to indicate their licence types, licences or permit number(s) held for each type and numbers of vehicles authorised. Bidders can also indicate licences not currently held, but which they are willing to obtain;
- Declaration (signed and witnessed).

3.5.3 Also during stage one, bidders are provided with THC's Conditions of Contract document which indicates in detail the terms and conditions of provision to which they would be bound. Section one contains standard contract clauses. Section two includes Specifications for all Routes, Vehicle Specification and Maintenance and Publicity requirements; Default System; Transport of School Children and Pupil Safety. Section three covers contact administration. (This Conditions of Contract document has been subject to a separate detailed commentary by TAS).

3.5.4 Stage One submissions are designed to determine whether a bidder qualifies or not on the basis of the ESPD statements.

3.5.5 Stage Two response - the bidder must complete:

- Form of Tender;
- Certificate of Bona Fide Tendering;
- completed table of "non-disclosure" items relating to FOI(S)A obligations – if applicable;

- Public Contracts Scotland Tender Technical Response;
- Public Contracts Scotland Tender Commercial Response.

3.5.6 For stage two mini-competitions, THC organises Lots as follows:

- Lot 1 – Vehicles up to 8 passenger seats: North area
- Lot 2 – Vehicles up to 8 passenger seats: East area
- Lot 3 – Vehicles up to 8 passenger seats: West area
- Lot 4 – Vehicles of 9 passenger seats or more: all areas
- Lot 5 – Emergency contracts: all vehicle sizes and all areas.

3.5.7 Community Benefits – “The Council will include a range of community benefits considered to be proportionate and relevant to the value and length and nature of individual call-off contracts and the nature of the operator’s business. Where applicable the Mini-competition will advise that Community Benefits will be required in bidder proposals for evaluation purposes using the scoring criteria (which will also be detailed in the tender documents applicable).”

3.5.8 Stage Two Mini-Competition Award criteria is based on price and technical questions:

- Pass or fail questions:
  - ◆ Licences or Permits held;
  - ◆ Vehicle type and seating capacity and
  - ◆ Operating and administrative arrangements (e.g. emergency provisions and timetable if not specified in the invitation).

3.5.9 Scored responses - price (normally 85%) and quality (normally 15%) of the total score, but option to vary quality score of up to 25%. Emergency Contracts are scored as price (90%) and quality (10%).

3.5.10 Quality factors are scored against responses to the following four questions:

- What experience, training or skills do you and/or your driver(s) have in disability awareness and assistance to vulnerable passengers or those with special needs? (4%)
- What arrangements would you have to inform passengers (and, where relevant, parents and schools) of service disruptions? (3%)
- Describe how you will publicise the Public Route(s) you are tendering for. (3%)

- Describe any community benefits you are able to offer. (5%)

3.5.11 Quality criteria are scored as indicated in Table 7 below:

**Table 7: Quality Scoring Criteria (as in ITT)**

Service Type	Publicity / Communications	Passenger Care / Assistance	Community Benefits	Total
Public Bus / DRT	5% to 10%	Up to 10%	5%	15% to 25%
School Transport	5% to 10%	5% to 10%	5%	15% to 25%
Emergency Contracts	<5%	<5%	<5%	10%

3.5.12 During the Stage One ESPD statements, item 4C.6 states *"The following educational and professional qualifications are held by the service provider or the contractor itself and / or its managerial staff: Holders of a Standard National or Standard International Operator Licence need to hold, or employ a suitably qualified transport manager who has, a CPC (Certificate of Professional Competence) for Passenger Transport Managers."*

3.5.13 Non-PSV operators (taxi, CT) are not required to respond to 4C.6 in the absence of the need for a CPC holder. But this is not explicitly stated and in not providing a response it could be assumed that they would fail to qualify (which is not the case in practice). If the question is only meant to apply to PSV operators, then the engagement of a CPC holder is already a legal requirement by the Traffic Commissioner and the PSV 'O' Licence issue is dependent upon it.

## 3.6 Conditions of Contract Document

3.6.1 THC issues its contractors with a common terms of contract document which comprises largely standard clauses which apply to all transport operators (taxi, bus and CT) engaged in service provision including home to school and local bus routes. TAS provided an exhaustive review of this document and suggested numerous textual changes in order to improve clarity, legal integrity and practical utility of the document. This has been circulated separately.

## 3.7 Current Contracts

3.7.1 Most of the Council's current public and school transport contracts commenced either on 1 January 2017 or 24 April 2017 and were awarded until 31 December 2021. Where needs have arisen during the contract period (unless short-term), the same end date has been used. The contracts include an option to extend for up to a further 12 months, which has been taken up where achievable.



3.7.2 As of mid-2021 there were 423 school transport contracts, plus 85 public bus or dial-a-bus contracts; many of the public bus contracts include transport of entitled pupils and are designed around school needs. (There were also 106 parental expenses routes which do not require tendering). There are around 90 different providers fulfilling these contracts – the precise number is difficult to determine because some appear more than once on the suppliers list with slightly different names (e.g. 'CE Taxis' and 'C&E Taxis').

**Table 8: Main Contracts by Operator (2020)**

Operator	No. of Contracts	Value
Highland Country Buses / Stagecoach Ltd (Stagecoach)	73	£5,700,845
Shiel Buses Ltd	21	£1,530,703
D & E Coaches Ltd	32	£1,311,305
CFD A Firm (Dunnett's)	16	£589,034
Easter Ross Coaches LLP	6	£395,115
Durness Bus Ltd	12	£380,767
Cameron Minibuses	9	£339,378
Culloden Ltd (Sneckie Taxis)	20	£303,388
Ali's Taxis	6	£270,071
W D Mackay	14	£234,626
Others (incl. parental routes etc.)	212	£4,756,250
<b>Total</b>	<b>421</b>	<b>£15,381,134</b>

3.7.3 Table 8 above is taken from THC report *Commodity Profile and Sourcing Strategy for the Provision of Passenger Transport (principally School and Public Transport) 2020* and gives an indication of the main contractors from whom THC procures services. Amongst these top providers listed there is little change over the years.

## 3.8 Market Engagement

3.8.1 Given the limited scale of passenger transport operations in the area, THC has the vast majority of operators already as part of the framework. Those operators under contract were invited to participate in a survey in 2019. Out of 90 contractors, 45 responded to the survey – the 50% response rate being reasonably high for surveys of this kind, providing a representative sample. This reflects the attendance at the supplier events – response rate was 100% (or very near) of those attending the events, as the questionnaires were filled in at the meetings. It can be argued that contractors with some negative or critical comment to offer are more likely to have participated and are less likely to be among the 50% that did not respond, although this is conjecture.

**Table 9: 2019 Contractor Survey Feedback**

Area	How much do the items listed matter to you? (Scale 1 'not at all important to 5 'very important') – average score	How do you rate the Council's performance on the items listed? (Scale 1 'very poor' to 5 'very good') – average score
Clarity of Conditions of Contract	4.74	4.14
Clarity of contract specifications	4.73	4.00
Prompt payment	4.61	4.57
Working relationship with Transport team	4.80	4.57
Working relationship with Procurement team	4.43	4.00
Relationship with schools	4.63	4.35
Having your suggestions heard	4.52	4.23
Flexibility when changes are needed	4.55	4.33
Time to plan for changes needed	4.33	4.23
Ease of use of PCS-T	4.49	3.94
Information sharing	4.43	3.94
<b>Overall Average Response</b>	<b>4.57</b>	<b>4.21</b>

3.8.2 The survey yielded uniformly positive responses and the weakest areas in the second column still see the Council's performance rated as 'Good'. These weakest areas are:

- Clarity of contact specifications;
- Working relationship with procurement team;
- Ease of use of PCS-T and
- Information sharing.

3.8.3 The survey findings do not, however, raise any concerns or need for action on THC's part.

## 3.9 General Issues Around Procurement

3.9.1 The following issues were considered in interview with David Summers (Principal Transport Officer):

- **Current Procurement Systems** – new contracts are on DPS (post October 2020) but the bulk of contracts are under the existing framework which is in a run out phase. The DPS quality assessment has worked quite well. Reverse auctions are not held on DPS; these have been attempted in past under framework but results have not been especially favourable. One School One Operator has been used in a few cases for smaller primary schools.
- **Phased Procurement** – the current approach is to procure everything in one go with contracts with the same end dates. Staggered renewals have been considered but it has not yet been assessed how this could be best broken down into separate tranches. Some packaged tenders were worthwhile in terms of benefits. Software recommendations of TAS review will bear an impact on how procurement phases might be better used. Current contract terms are 5 years and approval has been given to extend this by 1 year into 2022. Small vehicle contractors have posed no problems with this but bigger bus operators have expressed reservations.<sup>8</sup> Stagecoach is the majority operator in some areas, but other operators are also important. The retender programme impacts on public bus provision. There is potential to extend beyond the five year contract term to enable a better return on investment for operators.
- **Social Value** – THC uses Community Benefit consideration and this constitutes 5% of evaluation in DPS, though this was not part of the scoring process during the last tender exercise. This was new territory for the bus operators and not all were able to respond. THC is aware of the strong Scottish Government guidance on this.
- **Approach to Pricing** – whilst 'cost per year' is used to evaluate public bus, 'per day' is used for schools. There are no working thresholds of acceptable rates. There is a formula for factoring inflation but not all operators had used this leading to some discrepancy between who gained benefit. THC recognises that there is a case for incorporating automatic increases into the contract terms. In-house fleet operation is potentially a more viable option on cost grounds and could be expanded.
- **Season Tickets** – very small volumes of these do not enable any great negotiation leverage on cost. Tracking of usage is not undertaken.

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<sup>8</sup> Subsequently most contracts were extended for the year, but large bus contracts in Skye and Lochaber were only extended by 3 months.

- **Market Engagement Activity** – this occurs around tendering cycles and there is a good ongoing relationship with operators. COVID has curtailed the depot visits that would be undertaken by THC staff. A survey was undertaken in 2019 and its findings were useful – see above.
- **Scope of Market** – generally, much of the market in Highlands is already engaged in THC contract work. Some areas have a lot of taxi operators, others very few. There are some operators (e.g. on Skye and in the Inner Moray Firth) who have focussed on tourist work and who could be utilised more. Servicing cruise ships at Invergordon, for example, has been lucrative for some bus providers. Given the geography, there are few options to benefit from cross-boundary work from operators – only reasonable option for this is Moray district.
- **In House Fleet** – this is treated as a separate entity from the procurement system and delivers on traditional routes that have been established and where it is deemed that the fleet provides value for money. There is a system to accept tenders from the fleet but this is not used. Current scale of in-house operations has been acceptable under this approach.
- **Community Transport** – there is potential to expand the role of CT operators but DS is mindful that the sector cannot be assumed to solve all problems. This is a developing area and some innovation has been made (use of car scheme for H2S in Gairloch for example).
- **TUPE** - has been an issue in the past following retenders and some TUPE claims have been challenged. There have been no transfers between in-house and external providers however, so TUPE has not arisen in this context.
- **Disclosure & Safeguarding** – bigger operators carry out PVG checks but THC checks on behalf of smaller operators. Karen Giles leads on managing this area but issues have rarely come up. HR is available to advise if required.
- **Peak Workloads during Procurement** – workloads have been managed but have involved a lot of extra hours by DS (for example). In 2015/16 the team was very much stretched to the limit – council had decided to retender Sutherland a year early. Staggered procurement would not necessarily assist with this problem but any procurement options should be considered.

## 3.10 Implications of Free Travel for Young Persons Under 22

- 3.10.1 In March 2021, the Scottish Parliament passed legislation giving the Scottish Ministers the powers to establish a national concessionary travel scheme for free bus travel for residents of Scotland aged under 19 (the Young Persons

Scheme)<sup>9</sup>. In October 2021 amending legislation extended this to young persons under 22 years of age<sup>10</sup>. This Scheme comes into effect from the end of January 2022 and the period for applications for the necessary entitlement cards is now open. The core route for applications is on-line, but applicants can apply via their local council and in some areas schools are coordinating applications on behalf of their pupils. [Customer.service@highland.gov.uk](mailto:Customer.service@highland.gov.uk) is identified in guidance as the appropriate contact point in THC.

- 3.10.2 The aim of the initiative is to encourage Scotland's younger generations to use public transport with a view to embedding that behaviour from a young age, to tackle the climate emergency and to improve air quality in towns and cities by reducing the number of car journeys – all objectives that THC would support.
- 3.10.3 The requirement to provide free travel to holders of Young Persons Scheme entitlement applies to operators of registered local bus services and regular timetabled coach services, unless specifically excluded as premium services (e.g. City sightseeing services or sleeper coach services), excursions, tours or other non-standard services.
- 3.10.4 As this scheme is funded nationally through Transport Scotland, there is no direct impact on THC's budget. However, there are a number of implications for the Council which need to be considered, including the impact on home to school travel arrangements.
- 3.10.5 Operators are to be reimbursed for providing free transport on a similar basis to the reimbursement they receive for participation in the National Concessionary Bus Travel Scheme for Older and Disabled Persons. This uses an economic model established in 2013 and sets reimbursement rates that are designed to ensure that operators are no better and no worse off as a result of the scheme. In simple terms operators get reimbursed for the fares revenue they forgo, taking into account any discounts they already operated (e.g. they currently allow free travel for under 5s so will not receive any reimbursement for those journeys), subject to a discount that removes the additional journeys that have been generated by the introduction of the concession. For example, if 50 disabled passengers travelled on a fare-paying basis before the concession, paying £1 each, the operator would have received £50 in fares income. If, after free travel was introduced, 110 disabled passengers made journeys, the operator would be reimbursed for each passenger fare foregone at a discount designed to provide them with £50 [ $50/110 = 45.45\%$ ]. If the operator has to put on additional buses to cope with the extra demand, they can make a claim for additional funding.
- 3.10.6 It can be seen that setting this discount rate is fundamental to the economic wellbeing of the operators. In practice it has not proved easy to get this right and as time moves on, the baseline reference point - the number of

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<sup>9</sup> *The National Bus Travel Concession Scheme for Young Persons (Scotland) Order 2021 No 175*

<sup>10</sup> *The National Bus Travel Concession Scheme for Young Persons (Scotland) Amendment Order 2021 No 381*

passengers travelling at a time when older and disabled people paid a full fare – becomes increasingly out of date.

3.10.7 The initial Young Persons Scheme reimbursement rate was set at 60.3%, but altered in November 2021 with the extension to under 22s so that there will now be two reimbursement rates during financial year 2021-22:

- 43.6% of the adult single fare for under 16s and
- 81.2% for 16 to 21 year olds.

Note that whilst it might seem that reimbursement for 16 to 21 year olds is more generous, the effective rate for under 16s is actually 87.2% if one accepts that under 16s have generally benefitted from a half fare operator discount. In practice the calculations have had to take into account the wide variety of discounted tickets available in Scotland e.g. the two largest operators, Lothian Buses and First Glasgow, currently have different discounts for under 16s, under 19s and students, whilst Stagecoach has generally been far less generous.

3.10.8 It is important to understand from the above that this is not a subsidy to operators as is sometimes stated. However, as the state is now paying the fares for a large proportion of bus passengers, as well as providing Covid-19 recovery funding to operators, there is no doubt that operator dependency on public financing has increased significantly.

3.10.9 In setting the above scheme discounts the Scottish government used data from the Scottish Household Survey to estimate travel patterns of 16-21 year olds who have generally been travelling on full adult fares. However, it recognised significant uncertainties, exacerbated by the impacts of the ongoing pandemic, over take up and potential impacts on cost for operators. There are also variations between operators, for example, in the commercial child discounts offered prior to the scheme, which may mean they are affected differently by the use of a single average rate. The budget set aside for the first year of operation of the scheme assumes that trip numbers will only be ca. 80% of those that would be made when Covid-free.

### **Implications for THC**

3.10.10 In respect of home to school transport, the immediate effect of the introduction of the free scheme is that pupils will be able to use their free bus passes for travel to and from school, provided that they live on a public bus route. In some cases the Council currently purchases bus passes from operators for entitled students to travel on their commercially provided services. THC could avoid the cost of this if they can require these students to apply for and use their entitlement card. If they don't use buses for other purposes, or have a minimal service in their area apart from the school bus, there is no immediate incentive for them to apply (because they get their transport free anyway).

- 3.10.11 In our view, it is reasonable for THC to require eligible applicants for H2S to acquire a Young Persons pass, provided it does not cost them anything. This is because s51(1) Education (Scotland) Act 1980 requires the Council to: *“make such arrangements as they consider necessary for the provision of any of the following facilities in respect of pupils attending schools or other educational establishments—*
- a) *for their conveyance without charge for the whole or part of the journey between their homes and the schools or other educational establishments which they are attending;”*
- 3.10.12 Facilitating the pupils to take up the national Young Persons pass [National Entitlement Card] seems to us to meet the Council’s duty. The Young Scot National Entitlement Card is currently free of charge and the free travel product is to be loaded on that. We believe it would be unreasonable (in the context of school transport) for parents to refuse to withhold consent to their child applying for an entitlement card.
- 3.10.13 In situations where there is no bus service available that entitled children can use to travel to school THC may contract in a service from an operator. It has two main service options:
- a) a dedicated ‘school bus’ i.e. one that operates on a ‘closed door’ basis and which is only available to pupils and staff attending the institutions served, and not to the general public;
- b) a public bus i.e. a registered local service whose timetable and route incorporates serving the necessary educational institutions, so it has capacity for the entitled pupils but may also carry members of the general public.
- 3.10.14 The Young Persons Scheme only applies to option b) services. Where operators of such contracted services carry pupils who hold Young Persons entitlement, they will now receive some fares reimbursement from Transport Scotland. This potentially gives the opportunity for THC to negotiate a matching reduction in the tender prices paid.
- 3.10.15 This raises the question whether THC could convert any services contracted as dedicated school bus services (Option a) above) could in future be converted to public services (Option b) above) so as to attract some fares revenue from Transport Scotland and reduce the cost to THC. Our understanding is that generally the PTU has sought where possible to utilise the Option b) approach because this enables the operator to apply for a mileage related grant under the Bus Service Operators Grant (BSOG) scheme, and this will be taken into account when the operator tenders to provide the service, thus reducing the cost to THC.
- 3.10.16 There are some criteria for qualification for BSOG which prevent it applying to all school bus services. These are that the service is a local service (i.e.

registered public bus service) commissioned by the local education authority under its Education Act duties and that:

- (a) seats on the vehicle by means of which the service is provided are normally available to members of the public and the service is regularly used by such members;
- (b) the stopping places (other than those to or from which the service is mainly provided) are situated at locations where they are likely to be used with reasonable frequency by members of the public;
- (c) such members are able to make a single journey between any two stopping places upon payment of a fare which is not a deliberate deterrent to their use of the service;
- (d) such members are able to pay the fare at a place and in a manner which are not a deliberate deterrent to their use of the service; and
- (e) arrangements are made which afford members of the public a reasonable opportunity to inform themselves of the existence of the service, the times of its operation, and the places which it serves.

- 3.10.17 In practice, therefore, a service that only runs along a route between pupils' homes and their school or college and does not either pass or go forward to a more generally useful destination, or where all the seats on the vehicle have been allocated to pupils (i.e. no room for the public), has been considered to be ineligible for BSOG and therefore not worth commissioning as a registered local bus service, because of some administrative burdens around registration, publicity and information.
- 3.10.18 However, to be eligible for the Young Persons Scheme the service simply has to be a registered local bus service. There is no requirement for it to meet the above criteria for BSOG receipt. This suggests that it will be worthwhile to carry out a review of THC school bus services commissioned under Option a) above to assess whether they are carrying enough passengers for it to be worthwhile to convert them to an Option b) service. This will require fare tables to be created for each service in order that there is a basis for reimbursement.
- 3.10.19 Note that there is an implication under the Public Services Vehicle Accessibility Regulations (PSVAR) – see 4.5.2 below for more detail of these. Some of the Option a) services that THC commission are exempt from PSVAR because no charge is made to any passengers (i.e. in addition to the entitled pupils for whom free transport must be statutorily offered, there are no non-entitled 'privilege lift' pupils who are paying to use spare capacity). Changing these services to operate under an Option b) model would certainly bring them within the PSVAR regulations thus requiring them to be operated by a vehicle that meets the accessibility construction requirements – generally this means a low floor bus with space for a wheelchair user. This could add extra expense



to the operation and defeat the benefit of attracting fares reimbursement under the Young Persons Scheme. This supports the suggested approach of a route by route review.

- 3.10.20 A major implication from the introduction of the Young Persons Scheme is that every authority in Scotland is under pressure to reduce the 'school run' and achieve modal shift to walking, cycling and public transport. Consequently, it is reasonable to expect that under its environmental and road safety remit on, THC will be promoting greater use of buses for the journey to school, as will Transport Scotland and other national and local lobby organisations such as Living Streets and Sustrans. It is known that many parents consider that walk journeys beyond a mile are too onerous for their children and that buses are too expensive and therefore feel obliged to take their children to school by car. The introduction of free bus travel may well change that view so that we will see an increase in non-eligible pupils using their free passes over shorter distances (i.e. within the 2 and 3 mile statutory limits) leading to capacity issues on school bus services. This was a significant issue on the Isle of Man when the Manx government gave young people free travel and it ultimately led to them changing this to a 30p flat fare (note that on the IoM there is no such thing as a statutory free school transport duty). Operators will generally support more young passengers on buses as a source of income and potentially developing a future adult market.
- 3.10.21 This will potentially be more of an issue on afternoon journeys out of town and city centres where there is a danger that passengers making longer distance journeys home will be crowded off the bus by pupils making only two or three stop journeys. Elsewhere this has been countered by setting down restrictions on specific afternoon services (i.e. the outbound service does not stop at the first three stops) but this can disadvantage those people, particularly older people, who have difficulty walking.
- 3.10.22 The question therefore arises whether the cost of putting on additional capacity will be met by Transport Scotland – something that is unclear at present, even though they do, in principle, meet the cost of additional capacity required because of free travel for older and disabled people. The implication is that pressure will be placed upon THC to mitigate the problem by commissioning additional service capacity.
- 3.10.23 Transport Scotland could in principle refuse to admit certain services into the scheme if they thought that they were really closed door school services – in the initial legislation SSI 2021/175 10(1) – “*The Scottish Ministers may exclude an operator of an eligible service from the scheme in relation to any eligible service.*” Such a move by Transport Scotland This might be triggered by operator returns which must include:
- a) The number of passengers carried at adult single fares
  - b) The number of eligible passengers carried

If the former is consistently zero, this could potentially stimulate Transport Scotland to consider recommending exclusion of particular services, especially if there is a larger scale local authority move to register Option a) school buses as Option b) local bus services. However, this is not foreseen in the legislation, the associated Impact statements nor the guidance.

- 3.10.24 We understand from a Strathclyde Passenger Transport committee report that the specific school transport issue has been raised with Transport Scotland:

*"Similarly, in respect of Home to School Transport, it is anticipated that in certain instances where SPT currently procure bus passes from local bus operators for travel on local bus services, Local Authorities are likely to direct those pupils towards the new Young Scot NEC to meet their travel requirements. Such arrangements will be subject to the availability of suitable local bus services, and there being available capacity to carry the school pupils in question. SPT currently arranges circa 2,000 bus passes per annum on behalf of Local Authorities. The impact of the extended scheme on dedicated Home to School transport services (secured when no suitable local bus services are in operation) is unknown as yet. SPT anticipates some Local Authorities may elect to review their policies & eligibility criteria for dedicated school transport in light of the announcement. SPT officers have raised these issues with Transport Scotland's delivery team and our partner Local Authorities for consideration."*

- 3.10.25 The required Impact Assessment for the initial SSI was based on an assumption of only a 10% patronage growth amongst young people from the introduction of the Young Persons Scheme. The following paragraphs appear to be significant:

*"The majority of young people are either educationally or economically active, and so more likely than the older and disabled group to travel at peak times. It is possible that an increase in patronage at these times could increase the PVR (Peak Vehicle Resource) requirements of bus operators, leading to increases in both driver and vehicle resource. As much of the incremental business costs of an operator is driven by PVR, any increase in this will result in increased operational costs and potentially increased overhead cost (bigger depots, increased support roles, increased engineering roles, increased insurance costs).*

- 3.10.26 *Additionally young persons are more likely to travel in the evenings than cardholders under the Older and Disabled Persons Scheme, where service provision is lower and indeed in many areas is either not operated or operated either by larger operators or with funding support from Local Authorities. Increased demand at this time may lead to disproportionately high additional operating costs to operators.*

- 3.10.27 *A budget cap has not been set for the new Young Persons Scheme in 2021/22. This reflects considerable uncertainties over likely usage which make it difficult*

*to provide an accurate estimate, and the risk that too low a cap, in conjunction with the potential continuing impacts of the Covid-19 pandemic on patronage, could threaten the viability of bus services in the first year of the scheme.”*

3.10.28 Further implications include:

- a) THC will experience a loss of income from privilege places if the routes on which these places are offered are converted from Options a) to Option b) local services.
- b) The introduction of free bus travel for young persons will significantly improve the business case for investing in and promoting Independent Travel Training for entitled children so that they can make use of the offer.
- c) There will be general pressure from parents on THC to commission more public transport services that serve schools. An obvious argument will be that it is unfair that child in area A gets free travel whilst child in area B gets nothing, as well as emphasising the environmental and road safety impact of the 'school runs' that result from gaps in public transport provision. This route inequity has the potential to become a significant issue for local politics – one can envisage maps identifying areas where there is young persons transport poverty.
- d) Whilst most disabled children are provided with free H2S transport under the ASN category, the fact is that eligibility for free H2S transport is not coterminous with eligibility for the existing concession scheme under the disabled persons category. With the growth in smaller, more flexible bus services operating as dial-a-rides or DRT (demand responsive transport) there is the potential for some dedicated H2S services for children with lower level support needs to be delivered as part of a registered DRT i.e. a conversion from Option a) to Option b). This raises a safeguarding policy question of whether the general public should be permitted to travel on a service carrying particular individual or subsets of children.
- e) We anticipate that young people who are currently registered for a disabled concessionary travel pass may choose to change to a Young Persons Card because the latter does not have to be renewed every three years, unlike the former. This does mean that THC and, indeed, Transport Scotland, will lose a source of data identifying the travel behaviour of disabled young people.
- f) The new scheme brings in companion cards for severely disabled children under 5 – that could be pointed out to parents where there is pressure for THC to make nursery transport provision.
- g) We anticipate a number of card recognition / validation / information capture issues, particularly at the beginning of the scheme.

- ◆ The first issue will be ensuring that the card is presented and drivers ensure it is electronically recorded. This will be a change from current practice and will require driver and pupil training.
  - ◆ If there is a good take-up of the scheme it will create a problem for THC in logging the actual use of school buses by entitled pupils (to confirm that the appropriate size of vehicle is being procured) when there will be more non-entitled pupils than at present and both groups will be using the same card.
  - ◆ At present where the capacity requirement is such that more than one bus is required, THC can issue bus passes to entitled children that allocate them to specific buses i.e. half the pupils have a pass showing Bus 1 and the others have a pass showing bus 2. This facility will be lost in the transfer to the National Entitlement Card or Young Scot card.
  - ◆ Operators of school buses who, as a result of a contract change, suddenly have to record use of entitlement cards will need some form of Electronic Ticket Machine (this could be a small portable model as has been used in Shetland). In the past, Transport Scotland has funded such equipment within the concessionary scheme but we have not seen any suggestion that they will do so here. THC might take the view (as in Shetland) that for some cases numbers are so small that such expenditure is not merited and either there is a manual record or none.
- h) THC will lose the sanction of withdrawing a pupil's bus pass in the case of bad behaviour. We appreciate that the authority also issues the Young Scot card on an agency basis but the circumstances under which that could be withdrawn are severely circumscribed. We think that the onus for taking action will shift onto the operator to take action under their Conditions of Carriage. But this should be managed as a shared responsibility between THC, the operator and the school under behaviour management arrangements – this may require these arrangements to be refreshed.
- i) It is worth a reminder that the potential to operate a local bus service on which a Young Persons Scheme card could be used also applies to services operated by community transport groups, or indeed THC itself, under a s22 Permit.<sup>11</sup>
- j) Although likely to be only a minor issue in Highland, in Strathclyde they are anticipating a noticeable transfer from rail to bus.

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<sup>11</sup> Note also that there has been an extension to the Young Scot card to include those 'aged 19-25 and a full-time volunteer'. This would provide a 1/3 discount to those aged between 22 and 25.

- k) We have not examined the pricing structure of scholar season tickets in Highland compared to adult single fares, so it is unclear whether the main operators will gain or lose as they change from receiving a discounted termly or annual payment from THC to a payment based on average patronage rates across Scotland but directly related to day to day use on their routes in Highland. In other authorities in past years there has been a noticeable reduction in the use of free bus passes in the summer term. Where the education authority has paid for the pass in advance this does not disadvantage the operator; however, in the new model their income in the summer term may reduce.

### **3.11 Summary**

- 3.11.1 THC adopts a conventional approach to procurement as a means of achieving best value services and, where possible, cost efficiencies. THC faces considerable challenges in its provision of school transport due to the geographical distribution of residents and schools and distances involved. The operator market (especially bus and minibus operators) is limited and the competitive forces that can be played to drive down costs in a tendering situation elsewhere are not always available – over 30% of tenders issued produced only one bidder. This limits THC's options and frustrates best-value efforts.
- 3.11.2 The adoption of a Joint Procurement Strategy with Aberdeen City Council and Aberdeenshire Council, and of a Dynamic Purchasing System (DPS) which optimises the potential for competition can be seen as good practice.
- 3.11.3 The supply market is under extreme pressure at the moment as a result of:
- Significant loss of income to bus, coach, minibus, taxi and private hire car operators due to Covid-19 and the government guidance about minimising collective travel. This has limited the extent to which THC operators can spread their overheads across a wider portfolio of work.
  - Shortage of drivers – again due to the impact of Covid-19 related furloughs and lay-offs. Driving goods vehicles (HGVs and light van deliveries) has become a more financially attractive alternative to passenger work due to recent pay increases and bonuses, combined with an increase in home deliveries.
  - Above inflationary increase in the cost of road fuel. There is as yet limited transfer to electric or hybrid power and there are significant cost barriers – the economics of changing to electric minibuses, for example, simply do not stack up in the absence of significant capital grants.
- 3.11.4 The above, combined with the limited nature of the existing market, suggests that the potential for developing aggressive competition as a means of cost reduction is misplaced. Nor are there any obvious changes to the general

procurement processes or the underlying structure of school contracts that would deliver significant benefits.

3.11.5 THC will need to pursue a broader and more iterative approach including:

- A more active market development and support programme, particularly considering whether working with business start-up and development agencies could attract smaller-scale start-ups, particularly those that may cross-over from work in the care field. Support to the market should focus on improving and maintaining quality.
- Developing its portfolio of alternatives to commercial contracts that can be applied both strategically (greater use of ITT and community provision to deliver added value) and tactically (where the commercial offer is lacking or particularly expensive).

## 4.1 Introduction

4.1.1 The purpose of this chapter is as follows:

- To set out the scale and scope of THC school transport operations;
- To highlight areas of weakness that could be strengthened.

4.1.2 Operational safety standards and monitoring are covered in greater depth in a subsequent chapter.

## 4.2 Home to School Transport Operations in Highlands

4.2.1 Under its statutory duty THC is obliged to provide home to school transport to qualifying pupils. The relevant policies (both at Scottish Government and THC level) which determine THC's pupil eligibility and the process by which transport is allocated are covered in Chapter 2 of this review. Once eligibility is confirmed, the procurement process engages suitable transport providers or, in some cases, THC's own fleet provides the transport.

4.2.2 On the three current area-based pupil lists there are just under 9,000 pupils who are eligible for transport, many of whom are able to use conventional bus services using a free pass. However, some pupils require more bespoke journeys due to their living in more remote areas and / or more specialist provision, such as Additional Support Needs (ASN) pupils who may have mobility impairment – these journeys are much more expensive per pupil to procure and may require specialist accessible vehicles.

4.2.3 Transport is organised around three geographical areas (North, West and East) and pupil eligibility criteria such as Additional Support Needs, Gaelic Medium (GM). This is indicated in Table 10 below:

**Table 10: Eligible Pupils by Area and Qualifying Status**

Eligibility	North	West	East	Total
General Distance	2,326	1,962	3,847	8,135
ASN	102	78	247	427
GM	30	153	193	376
TOTAL	2,458	2,193	4,287	8,938

4.2.4 The home to school transport operations are delivered by a combination of:

- Commercial operators (bus and taxi) – carrying 96.8% of pupils, either on public bus services or dedicated school transport journeys, and all engaged via a standard procurement process;

- Community Transport operators – carrying 0.3% of pupils, some engaged though competitive procurement;
- Parents using private cars - carrying 1.3% of pupils, outside of the procurement process and
- In-House fleet vehicles & School Bus - carrying 1.6% of pupils, also outside of the procurement process.

4.2.5 The operator type is broken down across the three areas in Table 11 below:

**Table 11: Pupils Carried by Operator Type**

Provider	North	West	East	Total
Commercial Operator	2,325	2,120	4,210	8,655
CT Operator	5	20	0	25
Parent	35	35	51	121
In-House / School Bus	93	18	26	137
TOTAL	2,458	2,193	4,287	8,938

4.2.6 Operational standards are determined by the Conditions of Contract for external providers and in theory by a Service Level Agreement for in-house delivery (although the SLA has not been ratified as yet). The draft SLA mainly covers the terms by which Economy and Infrastructure procures services on behalf of Education and does not cover service specifications or operational delivery in much detail. So whilst the external providers must operate to a specification and quality standard determined by the contract, the in-house fleet has no equivalent specification although there is an expectation that equivalent standards will be delivered.

## 4.3 Passenger Assistants

4.3.1 Passenger assistants are provided if required on vehicles for ASN pupils and these are engaged by Education and managed by the schools and do not form part of the procurement process. They are, however, an important operational factor on these journeys, ensuring that pupils' needs are attended to. 45 ASN pupils (10%) are carried on in-house vehicles, whilst the remaining 382 are carried on external contracts.

## 4.4 In-House Fleet

4.4.1 THC maintains and operates an in-house fleet operation for a variety of purposes, including passenger-carrying activities. The latter is managed by the Transport Unit as a cost centre (except at Drummond School and Inverness Royal Academy where they are managed by the schools) and uses vehicles leased via THC fleet services. Economy and Infrastructure holds the budget for these operations as it does with those externally contracted. The lease charge



to Fleet is an internal recharge. A transfer to the TCU of the Inverness Royal Academy operation is planned.

- 4.4.2 The continued retention of the in-house fleet has been justified by THC, as summarised by this Members' briefing from 2015: *"Across much of Highland there is little competition for school transport contracts, especially in the large bus sector but also for minibuses. Tendered prices vary widely, but some are expensive in relation to the service provided. There can also be difficulties if a service provider fails to perform satisfactorily and there is no alternative provider available.*

*For these reasons an in-house operation is seen as one method of controlling prices and reducing the overall budget. This can be achieved in two ways:*

- If in-house operation is cheaper than a private sector contract would have been, or*
- The existence of an in-house operation increases competition and therefore encourages tenderers to reduce their prices."*

- 4.4.3 The fleet resources comprise:

- 1 supervisor (HC5 - 2 staff job share)
- 10 drivers - 7 current drivers (HC3), 2 transferred from school and 1 driver post vacant – recruiting to replace a contracted driver due to leave in summer.
- 14 Vehicles – detailed in Table 12 below.

Note that the driver numbers above exclude those drivers attached to Drummond School and Inverness RA, hence the apparent disparity between drivers and vehicles.

- 4.4.4 The Transport Officers (TOs) treat the in-house fleet as any external contractors. Some routes are for ASN pupils. Two job-sharing Bus Operations Supervisors report to the Senior TO (Operations). The TOs would like to use the fleet more but are constrained by a lack of vehicles and drivers. A similar issue arises with the use of community transport and voluntary car schemes. These could provide a more cost-effective service but constrained by available capacity. Having an alternative supply of transport resources would encourage more competition and lower the costs.

- 4.4.5 The fleet is dispersed across five depot locations for the purposes of maintenance (though may be held overnight on a day-to-day basis in locations of nearer proximity to school runs): Inverness (Inverness-shire), Portree (Skye), Brora (Sutherland), Dingwall (Ross-Shire) and Wick (Caithness). Fleet vehicles are fitted with trackers which report on driving habits, mileage, etc.

**Table 12: THC Passenger Fleet Details (as at June 2021)**

Reg	Location	Owner / Lessor	Type	Year of Origin	Capacity	Maintenance Depot
UHZ6339	Portree Operated by Gus's Taxis who insure. Now available for redeployment as Gus's Taxis has new contract with additional capacity and has acquired a new vehicle	THC	VW Caddy Wheelchair accessible Car	2018	3+Driver+ w/c	Portree
SX19HKF	Inverness In-house operation	Athlon Mobility Services UK	Vauxhall Corsa	2019	3+Driver	Halfords
WHZ4981	THS +MPP TEMP In-house operation	THC	VW Crafter	2018	12+1 w/c or 16	Dingwall (Temporary replacement due to repair – normally Thurso)
WHZ1052	St Duthus Uses two drivers from the school but PTU now recruiting to replace	THC	VW Crafter	2019	12+1 w/c or 16	Brora
VHZ2413	WH + NPP In-house operation	THC	VW Crafter	2019	12+1 w/c or 16	Wick
SV69LYW	THS +MPP In-house operation	Days Fleet	MAN TGE Accessible	2019	6+3 w/c or 16	Wick
OW19TBX	Farr High Driven by school Janitor	Days Fleet	MAN TGE	2019	16 + Driver	Brora
OW19TBZ	Drummuie In-house operation – PT Supervisor + part-time external	Days Fleet	MAN TGE	2019	16 + Driver	Brora

Reg	Location	Owner / Lessor	Type	Year of Origin	Capacity	Maintenance Depot
OW19TCJ	Golspie In-house operation	Days Fleet	MAN TGE	2019	16 + Driver	Brora
OW19TCK	Lochinver In-house operation P/T driver + P/T school Janitor	Days Fleet	MAN TGE	2019	16 + Driver	Brora
OW19TCO	Dingwall Temp In-house operation	Days Fleet	MAN TGE	2019	16 + Driver	Brora
WP20KHY	GHS Go Golspie (CT Group) driver but PTU recruiting to replace	Days Fleet	MB Sprinter accessible	2020	8 + 1 W/C + Driver	Brora
HX69CWP	Spare from 15/4/21	Days Fleet	Peugeot Boxer	2019	14 Accessible	Brora
SL20 EOY	Sleat Sleat CT to provide the driver Not in operation yet	Sleat Community Trust	Nissan EV	2020	7 seater	Portree

4.4.6 The fleet is operated under s19 Permits but all fleet staff drivers are required to participate in the Driver CPC scheme whereby ongoing training is required. This is used to maintain a standard of training within the fleet.

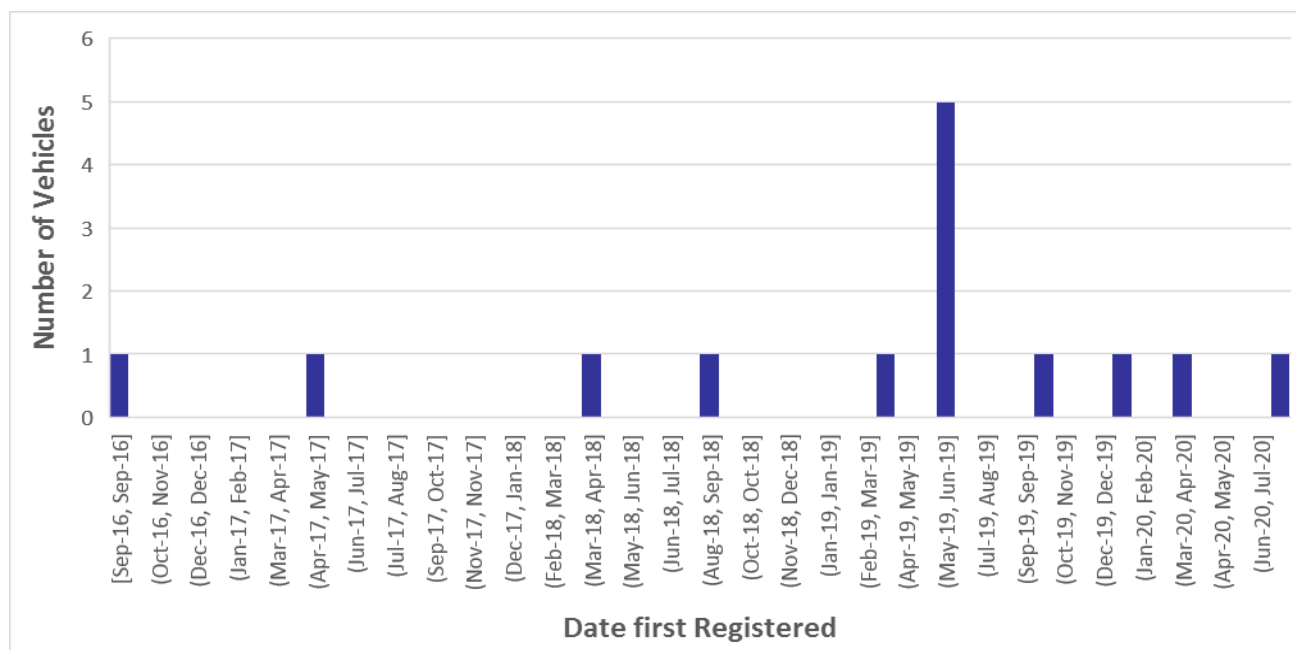
4.4.7 The registration dates and annual mileages, taken from MOT records where available, are shown in Table 13 below and the age profile in Figure E. Average annual mileage last year for the 11 vehicles where MoT records exist was 6,634 and lifetime average annual mileage was 5,809 – low annual mileages, even allowing for Covid since March 2020. This contrasts with the average mileage assumed for costing purposes. The average vehicle age at July 2021 was 2 years 5 months – a relatively young fleet.

**Table 13: Vehicle Age and Annual Mileage**

Reg.	Location	First Regist'rd (M/Y)	Last MoT (M/Y)	MoT Mileage	Mileage since last MoT	Annual Lifetime Mileage
UHZ6339	Portree	9/16	9/20	48,565	9,531	12,141
SX19HKF	Inverness	4/19		No MoT	No MoT	-
WHZ4981	THS +MPP TEMP	9/18	9/20	15,680	9,777	7,840
WHZ1052	St Duthus	4/18	4/21	23,334	10,176	7,778
VHZ2413	WH + NPP	5/17	4/21	31,779	10,146	8,114
SV69LYW	THS +MPP	1/20	12/20	6,561	6,561*	7,157
OW19TBX	Farr High	6/19	5/21	5,517	4,250	2,878
OW19TBZ	Drummuie	6/19	5/21	7,122	5,784	3,716
OW19TCJ	Golspie	6/19	5/21	6,284	4,109	3,279
OW19TCK	Lochinver	6/19	6/21	5,877	3,710	2,939
OW19TCO	Dingwall Temp	6/19	5/21	11,770	7,169	6,141
WP20KHV	GHS	8/20		No MoT	No MoT	-
HX69CWP	Spare from 15/4/21	10/19	9/20	1,760	1,760*	1,920
SL20 EOY	Portree Community Group	4/20		No MoT	No MoT	
Average annual of those recorded					6,634	5,809

\* = Not quite a full year

**Figure E: Fleet Age Profile by Month of Registration**



4.4.8 The trips delivered by the internal fleet and the additional vehicles at Drummond School and Inverness Royal Academy in each area by school are detailed in Table 14 below:

**Table 14: In-House Home to School Delivery<sup>12</sup>**

Area	School	Route	Pupils
North	Farr High	8000/4/CS	1
	Farr Primary	8000/4/CS	2
	Golspie High	9100/10/ASN	6
		9100/5/CS	7
		9100/6/CS	5
		9106/1/CS	7
	Golspie Primary	9100/6/CS	2
	Lochinver Primary	8203/1/CS	10
	Mount Pleasant Primary	9206/1/ASN/E	4
	Newton Park Primary	9309/1/ASN/E	9
	Rogart Primary	9106/1/CS	15*
	St. Duthus	4409/1/ASN/E	11
	Thurso High	9206/1/ASN/E	5
	Tongue Primary	8000/4/CS	1*
Wick High	9309/1/ASN/E	8	
West	St Clements	4800/01/ SCHOOLBUS	18
East	Bun-sgoil Ghàidhlig Inbhir Nis	1302/13g	1
	Drummond	1407/10s	8
	Drummond	1407/16/ASN	2
	Inverness High <sup>13</sup>	1200/4	2
	Inverness Royal Academy (ASN Department)	1300/6s	13
<b>TOTAL</b>			<b>137</b>

4.4.9 In addition to the school contracts, the fleet vehicles are available to serve schools activities during the day. During the first five months of 2021 (with some activities limited due to COVID), there were around 20 such bookings per month.

<sup>12</sup> pupil numbers are correct as stated in North Pupil List spreadsheet

<sup>13</sup> This route now ceased and vehicle/driver reallocated to 1302/13

4.4.10 The approach to costing THC fleet vehicles assumes the following:

- The full fixed costs are recovered through the home-to-school transport allocation. This includes the mileage and drivers' hours (which can and do vary) required for each specific school run. All additional activity is undertaken at marginal cost and recouped from the user – this includes a charge for the additional drivers' hours;
- A margin of 14% spare vehicle capacity is allowed for, either in the fleet or the short term external hire and for hire of relief drivers;
- An annual mileage of 15,000 has been assumed for unit cost calculations;
- Fuel costs are based on currently observed fuel consumption;
- An allowance of 10% of the Bus Operations Supervisor's salary and on-costs has been made for each vehicle.

These principles are those set down in report "Cost Justification for In-House Buses" (2015) by DS. We note a number of variances with the current situation:

4.4.11 The costs of the in-house fleet are detailed in Table 15 below:

**Table 15: In-House Fleet Financials (from Integra Budget Monitoring report March 2020)**

Category	Description	Budget 19/20	Actual 19/20	Budget 20/21	Actual 20/21
<b>Staff</b>	Manual Staff - Basic Pay	52,428	£57,746	£55,394	£48,473
	Holiday Pay	0	£137	£0	£158
	NI - Non-Teachers	2,188	£3,569	£4,336	£2,828
	Superann - Non Teachers	10,168	£11,760	£10,801	£9,915
	Training Courses	500	£1,685	£500	£1,613
	Apprenticeship Levy cost	238	£288	£277	£242
<b>Staff Total</b>		<b>£65,522</b>	<b>£75,186</b>	<b>£71,308</b>	<b>£63,230</b>
<b>Operations</b>	Derv	£28,000	£18,034	£28,000	£11,783
	Petrol	£0	£170	£0	£627
	Workshop Consumables	£0	£178	£0	£30
	Oil	£0	£12	-	-
	Miscellaneous Transport Costs	£3,000	£71	£500	£0
	Int Hire Cont Chg From Fleet	£43,800	£43,564	£103,843	£94,327
	Vehicle Maint O/chg From Fleet	£4,400	£4,400	£10,384	£12,256
	Educational Travel	£0	£50	-	-
	Insurance - vehicles	-	-	£310	£309
	Travel Mileage - Non Taxable	£0	£38	-	-
	Car Club Mileage	£0	£390	£500	£38
<b>Total Operations</b>		<b>£79,200</b>	<b>£66,908</b>	<b>£143,537</b>	<b>£119,370</b>
<b>Supplies &amp; Services</b>	Materials	£500	£492	500	£142
	Payments Ext Conts - Labour	0	£5,741	£2,100	£2,137
	Stationery	-	-	£0	£158

Category	Description	Budget 19/20	Actual 19/20	Budget 20/21	Actual 20/21
	Mobile Phone Line Rental	£0	£0	-	£0
	Mobile Phone Usage Costs	£100	£0	-	£0
	Budget Holding Code	-	-	(£51,283)	£0
<b>Total Supplies &amp; Services</b>		<b>£600</b>	<b>£6,233</b>	<b>(£48,683)</b>	<b>£2,437</b>
<b>Total Gross Expenditure</b>		<b>£145,322</b>	<b>£148,327</b>	<b>£166,162</b>	<b>£185,037</b>
<b>Capital Charges</b>	Cap Chgs Dep'n & Notional Int	-	-	<b>(£18,579)</b>	<b>(£18,579)</b>
<b>Income</b>	Hire Of Vehicles Income	(£17,050)	(£15,747)	(£17,080)	(£3,148)
	Other Misc Income	(£30)	(£2,590)	(£0)	(£2,157)
	Rechargeable - Others	(£5,700)	(£0)	(£5,700)	(£0)
<b>Total Net Expenditure</b>		<b>£122,542</b>	<b>£129,990</b>	<b>£124,803</b>	<b>£161,153</b>
<b>Variance</b>			<b>£7,448</b>		<b>£36,350</b>



#### 4.4.12 Explanatory notes from THC:

- The negative figure for Supplies & Services in 20/21 is largely due to a budget holding code (£51,283) which means that Finance needed advice as to where to allocate it. The bulk of this relates to fleet charges for additional vehicles and a small amount for increased payroll costs.
- The negative figure for capital charges in 20/21 is shown (in other internal records) as "Reverse Capital charge veh dep'n 20/21". This should be looked at in conjunction with the line for 'Int Hire Cont Chg From Fleet' budgeted at £103,843. It is a reversal of the capital element of the charge for vehicles that were bought rather than leased.
- Income is made up of hire of vehicles and "Rechargeable – others" for which there were no transactions in either year.

4.4.13 Using the pupil numbers in Table 11 for both years and the actual Total Net Expenditure noted in Table 12, the cost per pupil for in-house delivery was £949 in 2019 / 2020 and £1,176 in 2020 / 2021. Although an exacting cost comparison between the fleet and external providers has not been undertaken, it has been accepted within THC that the fleet provision offers very good value for money, the overall average cost per pupil (all providers) being £1,444 (2019 / 2020).

## 4.5 General Operational Issues

4.5.1 The following issues were raised in interview with Karen Giles (KG) (Senior Transport Officer):

### **Public Service Vehicle Accessibility Regulations (PSVAR)**

4.5.2 PSVAR applies to vehicles with a capacity for 23 passengers or greater. 'Closed door' school bus services are exempt (i.e. no availability to the public) unless a charge is made. This means that in principle any large school bus on which a privilege trip could be made available at a charge would be subject to PSVAR. This creates a potential difficulty in the school bus supply market as the traditional business model is to use coaches or buses that are being replaced in the mainstream bus and coach market and passed down for use on school transport where their economic life can be extended because of limited use (4 hours a day, 190 days a year). Many of these vehicles are not PSVAR compliant.

4.5.3 The industry had assumed that school buses were exempt but, as set out above, this is not always the case. Consequently, many are still not compliant, past the original deadline and are operating on the basis of rolling temporary exemptions provided by the Department for Transport to operators that apply. The latest exemptions apply until 31<sup>st</sup> March 2022, but before then new

guidance will be forthcoming which may require operators to retrofit handrails and other assistance infrastructure although there may not be a requirement to retrofit wheelchair access.

- 4.5.4 It is disappointing that the DfT does not appear to fully understand how statutory home to school transport works. Authorities are subject to their Education Acts duties but they are also subject to Equalities legislation. Consequently, they need to know, in advance, the identity and the access needs of every pupil or student for whom transport is to be provided. Where there is a requirement for wheelchair access then it must be provided. This should be on an 'integrated' (PSVAR compliant or better) vehicle to allow students to travel with their peers, unless the student's needs require a different solution.
- 4.5.5 To simply offer a separate accessible vehicle rather than to integrate the student would be a breach of Equalities legislation. Consequently, every pupil or student who requires a PSVAR vehicle is provided with one, whether they are an 'entitled' student or a 'privilege lift' student. There are thus no disadvantaged students and no discrimination is taking place. As it stands, the DfT is requiring local authorities to provide wheelchair accessible vehicles when the authority knows that no wheelchair access is required by any passenger.
- 4.5.6 Without continuing exemptions for closed door school bus services, until the vehicle supply market produces enough affordable second-hand PSVAR compliant vehicles, there is a risk that the Council will have to stop offering privilege lift seats to non-entitled children. This approach has unfortunately already had to be deployed in a small number of cases.

### **Pupil Behaviour**

- 4.5.7 A Code of Conduct for pupils is due for revision – this is a simple one-page leaflet which outlines points in three columns under 'Your Responsibility', 'Your Safety' and 'Your Rights'. The code does not make any reference to wearing seat belts, although it does instruct pupils to "always follow the driver's instructions when travelling".
- 4.5.8 The School Transport Policy also indicates some behavioural expectations. Schools have primary responsibility for disciplinary actions arising from pupil behaviour on transport – Head Teachers have the ability to apply disciplinary sanctions against any pupil misbehaving. The approach to ensuring this varies by school. A Head Teacher would take any decision to ban a pupil. Experience is that there have been few behavioural problems. ASN behaviour is dealt with in first instance by PAs who are engaged by schools.

### **Pupil Medical Requirements**

- 4.5.9 Drivers and PAs are not expected to have to deal with any medical requirements during journeys. Although PAs have had some training from the

schools, they are not expected to provide any medical support. Pupils who require this are expected to have specialist medical assistance in addition to the PA. This is arranged by the schools who have set up arrangements with the NHS to train the PAs involved (following a similar scheme in East Lothian) and involves minimal numbers of PAs.

### **Use of Technology**

- 4.5.10 Although trackers as used, there is no CCTV in fleet vehicles and no technological interface with external providers, although some contractors have CCTV.

### **Passenger and Parent Surveys and Feedback**

- 4.5.11 There are no surveys undertaken and no proactive means of gathering routine feedback. This is a reactive area where THC would only engage with service users, schools, or commissioners following a specific incident or adverse issue being raised.

### **Relations with Operators**

- 4.5.12 THC is good at maintaining relationships with operators through the Transport Officers and many issues are dealt with informally and without recourse to contractual actions. This is borne out by the contractor survey undertaken in 2019 in which all the providers who participated (50%) felt relations were good.

### **Reliability and Punctuality**

- 4.5.13 This is generally good and would be monitored by schools, who might get calls from parents. All operators are contractually subject to penalties for unreliability, although one-off instances are generally dealt with through dialogue. There is a more general parental understanding and tolerance of factors that might cause delays – related to locations involved, road conditions and weather – and delays are rarely escalated to complaint level.

### **ASN Drivers & Initial Family Visits**

- 4.5.14 There are no organised introductory visits prior to contracts commencing. Many drivers are already known in the communities and indeed, some taxi drivers might have made introductory visits on their own account – this could be part of a risk assessment process.

### **Emergency Arrangements and Communications**

- 4.5.15 This is entirely managed through the schools who alert parents of any changes or closures etc. Incidences of parents not being at home to receive pupils being dropped off are very rare. In such cases drivers have waited or returned children to schools or other safe locations.

## **Alternative Modes – ITT, Parental Grants and Cycling Arrangements**

- 4.5.16 There is no ITT underway. THC provides some parents with mileage payments. This is generally in remote areas where there is a dearth of available transport options or where there are specific needs that are best met through parental provision and where a parent has expressed that they are willing to do so.
- 4.5.17 Cycling has been discussed as an option to encourage but no formal process or payment for cycling is in place. However, THC is interested to consider whether a route that is unsafe for walking would be safe for cycling and if there are opportunities to use financial and support measures to encourage this rather than transport provision, such as purchase of bicycles for use, payments to use their own bicycles, regular bicycle checking and maintenance days at the school, assistance for schools to provide bike and associated equipment storage.
- 4.5.18 If a more concerted approach to promotion of cycling is adopted, THC would need to consider all risk elements with its H&S and legal experts with a view to the liability position if a child had an accident and the bike was found to be defective in some way. A robust approach would suggest THC would need to ensure helmets were provided and worn, Hi-Viz clothing worn and initial checks on cycles undertaken.
- 4.5.19 A range of alternative modes including cycling and ITT initiatives that have been promoted by Scottish government and adopted by other Scottish authorities is noted in the previous chapter on Policy as part of an overview of good practice from elsewhere.

## 5.1 Introduction

5.1.1 This chapter considers the extent to which community transport (CT) has a role to play in the provision of home to school transport in the Highland area. This is in the context of a shortage of good quality and good value transport operators at certain locations in the area.

5.1.2 For this section of the report the term CT is taken to mean:

- An independent third sector passenger transport operation, including:
  - ◆ Those that are exclusively focussed on transport provision as an objective (often called CTs);
  - ◆ Those that are part of some other community or social welfare activity e.g. a general community organisation;
- Primarily operating under s19 or s22 Permits;
- Not established with a view to profit.

5.1.3 There are some other forms of CT, most frequently social or community car schemes operating under s1(4) Public Passenger Vehicles Act 1981, which will also be discussed in this chapter.

## 5.2 Context – The Highland Council

5.2.1 THC is an education authority with duties and powers under the Education (Scotland) Act 1980 to make appropriate travel arrangements to enable scholars to attend institutions of learning. THC is also a passenger transport authority with duties under s63 Transport Act 1985 “to secure the provision of such public passenger transport services as the council consider it appropriate to secure to meet any public transport requirements within their area which would not in their view be met apart from any action taken by them for that purpose”.

5.2.2 “Public passenger transport services” includes services under s22 Permits and s19 Permit services provided “wholly or mainly to meet the needs of members of the public who are elderly or disabled”, which aligns itself with most CTs’ charitable objectives. “Public passenger transport” may also include school transport services that go beyond those statutorily necessary under the Education (Scotland) Act 1980, and these can, if necessary, be provided under a s19 or s22 Permit.

- 5.2.3 THC has a number of options where it has a duty to provide a pupil with home to school transport. THC can, depending upon the capacity of vehicle required, commission a service from:
- a) A commercial Public Service Vehicle (PSV) operator;
  - b) A commercial taxi or private hire vehicle operator (8 passengers or fewer);
  - c) An unlicensed operator of a small vehicle (8 passengers or fewer) provided that this is the only paid work that it undertakes with that vehicle for the period of the contract and THC has confirmed that this is the case;
  - d) A CT operating a vehicle under a s22 Permit – i.e. one that uses that vehicle at some point to operate a registered community bus service open to the public;
  - e) A CT operating a vehicle under a s19 Permit, provided the carriage of the relevant category of pupils for education purposes (either all such pupils or just those identified as having ASN) comes within the passenger categories associated with that Permit;
  - f) A driver of a small vehicle where the payment in respect of the journey does not exceed the amount of the running costs of the vehicle for the journey (i.e. the driver receives no remuneration).
- 5.2.4 Items d) and e) above are subject to compliance with statutory guidance from the Department for Transport which clarifies the circumstances under which exemption from full PSV licensing applies. This is explored in more detail below.

## 5.3 Context – CTs

- 5.3.1 The majority of CTs are independent voluntary organisations, managed by a volunteer board of trustees. Their constitutional objectives are usually charitable and most will be registered with the Office of the Scottish Charity Regulator (OSCR). They can follow a variety of differential constitutional forms, but CTs will normally be focussed on a particular local area, reflecting a community identity and the way in which volunteers are attracted to join the organisation. However, they can be local branches of national organisations, such as Age Scotland, which operate transport to achieve other objectives such as tackling loneliness.
- 5.3.2 A typical objectives clause for a CT would start by stating general charitable purposes but then add wording like *"including the provision of transport facilities in [insert place or area] for people who have special need of such*

*facilities because they are elderly, poor or disabled, have young children or live in isolated areas where there are no adequate public transport facilities.”<sup>14</sup>*

- 5.3.3 Where the CT runs a vehicle with capacity for nine or more passengers, it will normally operate under either (or both) a Permit issued under s19 Transport Act 1985 or one issued under s22 Transport Act 1985. These allow a not for profit organisation to operate minibuses for hire or reward without needing to comply with full Public Service Vehicle Operator licensing.
- 5.3.4 A growing interest in social enterprise in the last decade has seen the development of a new constitutional form – Community Interest Company (CIC) – which was created for the use of people who want to conduct a business or other activity for community benefit and not purely for private profit. Because these allow for executive control and are not necessarily constrained to charitable objectives, they cannot be registered charities. There is a small number of CTs created as CICs, including one or two in Scotland. A recently established example (June 2021) is Scottish Rural and Islands Transport Community CIC, a not-for-profit CIC with objectives “*to carry on activities which benefit the community and in particular (without limitation) to increase choice, accessibility and opportunity to meet transport needs of people living in or visiting the rural communities of Scotland*”.
- 5.3.5 A characteristic of CT CICs is that they are more focussed on public transport provision and public service delivery, rather than on services for specific groups such as older or disabled people. Other characteristics are their focus on paid staff rather than volunteers and their operation under PSV ‘O’ licences rather than Permits.
- 5.3.6 A number of CTs also operate social or community car schemes under s1(4) Public Passenger Vehicles Act 1981.

## **5.4 Position in Highland**

- 5.4.1 Given the geography of the Highland Council area and the difficulty in providing a conventional bus network, it is unsurprising that there is a considerable amount of CT activity. This is mostly small-scale and on a local area basis. THC currently supports 26 CT services through grant aid of £359k p.a. (an average of £13,800 per group). This is provided within a three year funding cycle awarded immediately pre-Covid. The impact of Covid has been such that four of these groups, which were new applicants, were not able to commence service delivery as intended. The grant requirements are aligned to general objectives rather than output specific ones.

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<sup>14</sup> Cited by Charity Commission for England - <https://www.gov.uk/government/publications/example-charitable-objects/example-objects-community-transport>

- 5.4.2 Some previously funded CT groups are no longer receiving funding, either because:
- ◆ They did not apply for funding, or
  - ◆ Analysis identified that they did not need the funding.
- 5.4.3 Two of the CTs provide home to school services for THC under contracts gained through tendering for work through the Council's Dynamic Purchasing System (DPS) i.e. they have registered to receive Invitations to Tender and have pre-qualified as an acceptable provider. Of these, one of the CTs also receives a grant but the other one does not. There have been occasions in the past where a CT has bid for school transport work but their price has been higher than commercial alternatives.
- 5.4.4 In addition, three CTs provide school transport services to THC under contracts organised through direct negotiation between THC and the operator. In one of these cases, a car scheme has been provided with a minibus by THC which is used for a school transport service and is then available for general community use at other times. The contract with the CT covers both functions.

## **5.5 Can CTs Undertake School Transport Work?**

- 5.5.1 To determine if a CT can legitimately undertake school transport work for THC requires consideration of:
- a) Whether providing a school transport service aligns with the constitutional objectives of the organisation;
  - b) Whether undertaking the work would risk the organisation's charitable status and
  - c) Whether the organisation can undertake the work under its current operator licensing arrangements.

### **Constitution**

- 5.5.2 The answer to a) can only be provided on a case by case basis. It would be reasonable for THC to assume that if a CT is prepared to provide a school transport service that the trustees or management have checked their own powers clause and are happy that this comes within these powers. It is likely to be acceptable:
- a) If the objectives clause covers general wellbeing in an identifiable community and the transport relates to that community;
  - b) If the objectives clause identifies people who are disabled and the transport relates to children with ASN or



c) If there is a general powers clause with broad enough coverage.

- 5.5.3 These powers would enable an organisation to undertake school transport for the Council provided it contributed to the community transport services which are its core activity and would be operated on a non-profit basis.
- 5.5.4 The added value benefit to the community from the CT undertaking a school service is most obviously created by considering the additional resource that accrues from the school bus being available for community use at other times. Assuming a 7 day week and a 7.5 hour operating day for the purpose of assessing this benefit and 3 hours spent daily on the school run, this means that a school operation would occupy around one fifth of the potentially available vehicle operating time, with four-fifths being available for community use. Thus the vehicle would be available at marginal cost within the community transport service that it already operates, perhaps using volunteer drivers or allowing volunteer self-drive by groups that have a MiDAS qualified driver.
- 5.5.5 It is in the nature of community transport services, particularly in rural areas, that they are defined by local responses to locally expressed needs. Consequently, a standard approach from authorities is to support making capacity available but not to specify any particular service to be delivered, unless a very regular service arises from the pattern of work over time.

## 5.6 Charitable Status and Tax

- 5.6.1 Some community transport groups may be concerned that undertaking work under contract for a local authority could either create a tax liability for them or endanger their charitable status<sup>15</sup>. This may depend upon whether the work is considered to be:
- Primary purpose trading – where income is generated directly from the core charitable activity e.g. fares charged to passengers;
  - Ancillary trading – that which contributes indirectly to the successful furtherance of the purposes of the charity. This is treated as part of 'primary purpose trading' for both charity law and tax purposes, and
  - Non-primary purpose trading – income-generating activities dissociated from its main transport function which are undertaken exclusively to raise funds for the charity.

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<sup>15</sup> NB This section is not relevant to CIC's which cannot be charitable

- 5.6.2 The worst case scenario is that such work would:
- a) Be treated as non-primary purpose trading for tax purposes and therefore that any surplus related to this work would be taxable unless it came within the small trading tax exemption. Even if the amounts involved were minor, many community transport groups would not want the accounting complications involved.
  - b) Be considered by OSCR as not advancing the charity's objectives or providing a public benefit AND that it would be so significant as to create a risk to the charity's resources, in which case the trustees would be advised to either not undertake the work or establish a separate trading company for that purpose.

### **The Charity and Public Benefit Tests**

- 5.6.3 As regards b) above, CT's charitable constitutions will contain an explicit charitable purposes clause. But this overriding clause does not usually remove the organisation's power to undertake non-charitable activities at all - instead it would usually limit that power to activities that do not prejudice the company's charitable status.
- 5.6.4 There is no obvious reason why operating a vehicle on a school transport service within the local community and for other community transport purposes within the restrictions imposed by the section 19 Permit or s1(4) PPVA 1981 would not be considered as falling within an objectives clause such as *"to provide and maintain non-profit community transport services"*.
- 5.6.5 It may be worth noting that when Minibus Permits were first introduced in 1977, home to school transport was specifically excluded as a valid purpose without the explicit approval of both the local education authority and the Traffic Commissioner. However, a subsequent Statutory Instrument (The Minibus (Permits) (Amendment) Regulations 1981 No. 195) removed this requirement so that since 1981 using a vehicle under a Permit to carry children between their home and their school has been a legitimate activity. This may reflect the fact that the advancement of education is a long-standing charitable purpose and transport to places of education is clearly ancillary to that.
- 5.6.6 "Community transport purposes" is, in practice, synonymous with operation under section 19 and section 22 Permits as far as operations involving minibuses or even MPVs are concerned. Section 19 Permits for vehicles with fewer than 17 passenger capacity can only be issued to bodies concerned with education, religion, social welfare, recreation or other activities of benefit to the community. In addition, the operation cannot be undertaken with a view to profit nor incidentally to an activity which is itself carried on with a view to profit.

- 5.6.7 The majority of community transport groups around the UK have charitable status and a significant proportion of them provide home to school transport under contract to local authorities using s19 Permits. We are not aware (nor is the Community Transport Association) of any case where their charitable status has been challenged on that basis. We have recently undertaken work for a CT whose activities were investigated by the Charity Commission in England and the fact that they were undertaking school contract work, which was a service specifically under consideration by the Charity Commission, was not considered an issue with regard to the organisation's charitable status. Although charity regulation in Scotland does differ from that in England, this particular issue is not one of the differences involved.
- 5.6.8 In our view there is no question that such work would pass the OSCR public benefit test. Reference to the OSCR "Meeting the Charity Test" guidance gives useful examples of where transport would provide public benefit whilst advancing particular charitable purposes. School transport is well within the sort of activities encompassed. The benefit to the public of there being an effective service to primary and secondary school is clear and there is no obvious disbenefit.
- 5.6.9 The OSCR "Charities and Trading" Guide makes the duties on Trustees clear at 3.1: "*Generally everything a charity does must advance its charitable purpose(s) and provide public benefit, or be designed to generate income to advance its purpose, including trading.*" Undertaking a school contract would clearly be in line with this duty, as it would advance the CT's primary purpose: "*to provide and maintain non-profit community transport services*".
- 5.6.10 In any case, even if providing school transport were not deemed to be charitable, there is nothing to prevent charities undertaking some non-charitable activities, providing this does not put their charitable assets at risk and provided it does not divert the charity from its core objectives. If this were not true there would not be a need for a small trading tax exemption for charities. Being taxed for non-primary purpose trading does not endanger underlying charitable status.
- 5.6.11 In summary, undertaking school transport for THC would NOT endanger a community transport organisation's charitable status.

## **5.7 The Tax Test**

- 5.7.1 Undertaking school transport under a contract with THC is likely to be considered as 'trading'. A charity will not pay tax on profits it makes from such trading if:
- a) It is making money in a way that helps the charity's aims and objectives, known as 'primary purpose trading';

- b) The level of trade that is not primary purpose falls below the charity's small trading tax exemption limit; or
- c) It trades through a subsidiary trading company.

5.7.2 An important point to note is that paying tax does NOT endanger the organisation's charitable status. The current small trading tax exemption limits are shown in Table 16 below.

**Table 16: HMRC Small Trading Tax Exemption Thresholds**

Gross Annual Income	Maximum Permitted 'Small Trading' Turnover
Under £32,000	£8,000
£32,001 to £320,000	25% of the charity's total annual turnover
Over £320,000	£80,000

5.7.3 Note that it is not necessary to consider these limits if the work for THC is considered primary purpose trading in a) above which in general we consider would be the case, because:

- a) Firstly, providing a school transport service in the local community would normally count as primary purpose trading as it advances the CT's primary purpose: *"to provide and maintain non-profit community transport services"*.
  - ◆ Community transport is synonymous with s19 / s22 Permit operation which includes 'education' as an identified criterion for operation. The s19 legislation specifically allows home to school transport operation by community transport groups under Permits. The fact that it is being funded by the authority under a contract rather than under a grant is irrelevant for tax purposes. As primary purpose trading, this work is therefore exempt from tax considerations.
- b) Secondly, even if it were found that the school transport element was not primary purpose trading, then it would be considered "ancillary trading" i.e. trading that although it does not directly advance a charitable purpose, contributes to its success.

- ◆ Assuming that the school contract work enables an additional vehicle to be made available to the community, or supports the continued availability of an existing vehicle, then it meets the ancillary trading requirement by making a vehicle available for community use – without the contract, the vehicle would not be available. Thus there is a direct link between the school work and the wider community use of the vehicle involved. As ancillary trading, the school transport work in the local community will be considered by HMRC as part of the primary purpose trading and therefore exempt from tax consideration.
- ◆ This can be contrasted with the situation where an organisation undertakes the school contract simply to raise money to further its non-transport charitable objectives; which would be non-primary purpose trading.

5.7.4 A final point is that it is only the *profits* from non-primary purpose trading that are subject to tax. It is unclear that any profits at all will arise under a contract between THC and a CT group, particularly if the vehicle will be operated under a s19 Permit as it cannot therefore be operated with a view to profit. If the CT group has adopted a full-cost recovery model as recommended in Government Guidance: “*Public service delivery: rules for charities*” it would seem unlikely that there will be any taxable surplus from the activity, regardless of whether the small trading exemption limit is breached or not.

## 5.8 Licensing

5.8.1 The appropriateness of CT groups undertaking school contracts was at the heart of a Judicial Review action at the High Court in London in late 2019. As some principles of transport law are not devolved, the case and the resulting guidance is relevant to Scotland. The claimants, BCA (a lobby group of small PSV operators), took action against the Department for Transport and the Driver and Vehicle Services Agency for not enforcing, as they saw it, a European Regulation (1071/2009) which governs professional road passenger transport licensing. This requires undertakings operating road passenger transport using vehicles with a capacity for 9 or more passengers to be professionally licenced – in the UK that means licenced as a Public Service Vehicle Operator. Where such a PSV ‘O’ licence is required, then drivers must hold vocational driving licences (D or unrestricted D1) and must maintain an up to date Driver Certificate of Professional Competence (DCPC) through periodic training; vehicles must be Certified and annually tested as PSVs and drivers’ hours and records regulations apply to the operation.

5.8.2 The UK introduced a Permit regime in 1977 (s19) and 1978 (s22) for not-for profit operators to enable them to charge fares without needing to meet the full PSV licencing regime. This has been the basis for the development of the CT sector. Although this provides for a ‘light touch’ regime, the CT sector has

led the field in developing driver and passenger assistance training. It is noteworthy that the safety record within the CT sector is certainly no worse than within the professional sector and is arguably better. Consequently, we do not think that there is a safety case for THC to require PSV O licencing in its commissioning of school transport. The argument in the High Court was primarily stimulated by concerns around 'fair competition'.

- 5.8.3 Regulation 1071/2009 contains three exemptions from the requirement for professional licensing:
- a) Where all the organisation's passenger transport operations are undertaken for 'non-commercial purposes';
  - b) Where road passenger transport is not the 'main occupation' of the organisation or
  - c) Where all the journeys come within a 'short distance' threshold.
- 5.8.4 Exemption b) above applies to THC as well as to other organisations established for non-transport purposes, such as a Community Council or Age Scotland.
- 5.8.5 Exemption c) above would only be required if the operator cannot rely on Exemption a). As the CT sector has consistently argued that Exemption a) applies to its operations, there has been little appetite to explore Exemption c).
- 5.8.6 CTs have argued that because they are charitable and that the Permit regime requires them to operate on a non-profit basis, they fall within Exemption a). BCA argued that contracting with public authorities to provide services is inherently commercial, particularly where it involves competitive tendering through a public procurement regime and therefore Exemption a) does not apply. This was the nub of the issue in front of the High Court.
- 5.8.7 The Court judgment did not fall definitively on either side; instead it required the regulatory authorities to examine each situation on its merits. However, the detail in the judgment did provide more assistance to CTs than to the BCA, by underlining that a key word in the regulation is 'purposes' i.e. there is a requirement to consider what the intent of the operator is in providing the service. Put simply, if the CT is undertaking the work in order to provide a public or community benefit, then it can come within the exemption. By contrast, if it is undertaking the work solely to generate income to cross-subsidise other services then that would be a 'commercial purpose' and could not benefit from the exemption.
- 5.8.8 This is set out in subsequent guidance published by the DfT in December 2020<sup>16</sup>:

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<sup>16</sup> <https://www.gov.uk/government/publications/section-19-and-22-permits-not-for-profit-passenger-transport/section-19-and-22-permits-not-for-profit-passenger-transport>

*The judgment clarifies that operators engaging in competitive tendering may still fall within the non-commercial purposes exemption provided their purposes for engaging in such contracts are purely non-commercial.*

- 5.8.9 In addition to the question of competitive tendering, the court identified a non-exclusive list of other factors that should be considered when assessing whether Exemption a) should apply. These included
- *The level of payments received* – operating under Permits prevents a charge for profit – a Full Cost Recovery model would not create a problem
  - *The operator's size within the overall passenger transport market* – this is primarily directed at identifying large urban operators such as Hackney CT (which actually already undertakes most of its operations under PSV 'O' licences). None of the CTs in Highland would be affected by this consideration.
  - *The use of volunteers within the operation* – this is primarily to identify operators that in essence replicate all features of a conventional commercial operation including fully paid staff and no use of volunteers. Note that this does not exclude the use of paid staff, including drivers, for example on a school bus contract, provided that elsewhere in the operation there is the potential for volunteer labour (potentially including driving). Again, most if not all the CTs that we are aware of in Highland do have a significant volunteer component.
- 5.8.10 Although we have set out the considerations that the Court identified to determine whether Exemption a) can apply, we do not think that it is THC's role to examine these in detail unless it is the Council that issues the s19 Permits on which the operator would rely.
- 5.8.11 The message to CT groups following the Court judgment and the publication of the DfT guidance is that the guidance is comprehensive and clear on the issues that have been contentious for so many years. The resolved issues include clarification of the 'non-commercial purposes' exemption, competitive tendering and operator surpluses as well as size and scale. The guidance challenges CTs to review their operations, to identify their purposes, to ensure that these are non-commercial and to satisfy themselves that each and every one of the services that they operate is undertaken in pursuit of these purposes.
- 5.8.12 Consequently, we recommend that the governing body of each CT (Board of Trustees or similar) should go through this exercise and should formally minute this, including referencing the evidence that they took into account and confirm that they meet the criteria for Exemption a). We recommend that those relying on Exemptions b) or c) should go through a similar exercise to confirm that this is appropriate.

- 5.8.13 We recommend that THC require a copy of this minute from any operator undertaking work for the Council under a contract using s19 or s22 Permits. This would apply whether the contract is awarded through the DPS or through direct negotiation.
- 5.8.14 As regards using the short distance exemption, we recommend strongly to CTs that they should not rely on this even though it would mean that short distance school contract work gained through competitive procurement could not be challenged by an aggrieved commercial operator. This is because all their other work would also need to come within the short distance thresholds. They could not undertake other work and rely on that being for non-commercial purposes, because for them to use the 'non-commercial purposes' exemption all their work, without exception, must be for non-commercial purposes'. The working assumption has been that CTs would only rely on the short distance exemption if the scale of their competitively tendered work and/or the payments received and/or the absence of volunteers meant that there was a danger of it being considered operation 'for commercial purposes'.

## **5.9 Issues for the Council**

### **Benefits and Costs**

- 5.9.1 The potential benefits to the Council from a CT providing a school transport service are threefold:
- a) Financial savings
  - b) Higher quality
  - c) Additional social value.

### **Financial**

- 5.9.2 Most people would consider that CT operators are bound to be cheaper than commercial operators because:
- a) They are non-profit, so there is no profit element in their charges;
  - b) They use volunteers so there is a saving on labour;
  - c) They may undertake charitable fundraising which means lower resource costs.
- 5.9.3 However:
- a) The profit element in passenger transport operation is very small to start with – an opportunity cost saving elsewhere (e.g. by having a base location that minimises dead time and mileage in respect of the contract that THC is commissioning) will completely override any profit element.



- b) 'Profit' is a poorly understood and defined concept. A significant proportion of accounting profits reported by commercial operators is required for reinvestment – only a small proportion is returned in the form of dividends to investors. CTs also require to make a surplus for investment – but this won't be described as profit.
- c) Very few CTs use volunteer drivers to deliver public sector contracts. The requirement for reliability and consistency over a long-term commitment leads naturally to employment. In practice, most CTs try to offer good terms and conditions, so will try to pay a living wage rather than minimum wage. In contrast the multiple small operators in the small PSV, taxi and private hire market are driven by competition (taking into account that driver wages are by far the largest single component of passenger transport costs) to keep wages low by paying a minimum wage or by the widespread practice of using self-employed drivers to whom the minimum wage rules do not apply and who may not pay the same amount of NI and tax as an employee. This fact alone is the main explanation why CTs can turn out to be more expensive than commercial alternatives.
- d) In particular, we do not think that THC should expect volunteer drivers within a community car service to provide school transport journeys. Community car schemes attract volunteers who want to help others who do not have access to transport for key journeys. Most do not volunteer on a daily basis. They certainly wouldn't be expecting to deliver daily peak-time services to the council.
- e) Of course, most CTs do use volunteer drivers for many of their services to the community but even here many CTs report difficulty attracting enough volunteers, particularly to keep a regular minibusservice going. This is one of the reasons that there are still relatively few s22 Community Bus services – once registered there is a legal commitment to run the bus service to the published timetable. Problems recruiting volunteers was one of the reasons that the sector lobbied successfully for the law to be changed<sup>17</sup> to allow them to use paid drivers. The point here is that it cannot be assumed by THC that any particular CT will either wish to or be capable of expanding its operations by recruiting more volunteers.
- f) Charitable fundraising is certainly a factor for smaller CTs which regularly raise funds for vehicle acquisition and replacement using this approach. However, as CTs grow in size and become more professional in their operations – all characteristics that THC would welcome – it becomes more and more difficult to rely on charitable fund-raising to cover core costs. Put simply, if an accessible minibus has, say, an eight-year life expectancy and costs £48,000 then a CT with one minibus only needs to raise £6,000 a year to replace it or run a major fundraising drive once every 8 years. But by the time they have four minibuses they need to raise £24,000 a year or

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<sup>17</sup> S59(4) Local Transport Act 2008

run a major drive every second year. This is a very significant commitment. If the CT is entering into a longer term contract with THC or some other public body then the obvious strategy would be to lease the vehicle and to include the lease costs in the tender price. It is not an appropriate function of charitable fundraising to save local authorities their costs on providing statutory services.

- 5.9.4 In summary, it should not automatically be assumed that CTs will be cheaper than commercial operators.

### **High Quality**

- 5.9.5 In general, local authority experience is that they can expect fewer performance problems with CT operators on school transport than with the commercial sector, although in THC's case it reports few performance problems with most of its commercial contractors. In particular, the culture of the organisation and focus on people's needs has an impact on the sort of people who apply to work in CTs. This is reinforced by the MiDAS and other training that is commonly applied, as well as a generally lower churn amongst staff.

### **Additional Social Value**

- 5.9.6 This is an important issue for the Council taking into account its requirement under s1 Local Government in Scotland Act 2003 to achieve the best balance of cost and quality in delivering services (having regard to economy, efficiency, effectiveness and equalities), along with national guidance on the consideration of social value and community benefits whilst meeting the Council's sustainable procurement duty. It is an issue that is highlighted in the Council's Joint Procurement Strategy and ties in with many of the themes in the Community Benefits Project Plan – social, health, fair work practices, 3<sup>rd</sup> sector organisations, resource efficiency and the circular economy, collaborative working.
- 5.9.7 A contract to provide home to school transport services is a requirement to provide a peak-time resource (suitable vehicle and driver) for ca. 190 days a year. The cost associated with that contract can be considered in terms of fixed, semi-variable and variable costs. All variable costs will be attached to the contract. Fixed costs will be distributed across the work undertaken in the year. However, if there is little other work for that vehicle during the day / year then the Council will be paying for the full element of the fixed costs in the school contract. Operators are in any case likely to load the fixed (primarily vehicle and equipment) and semi-fixed elements (e.g. staff training, management) into the contract price unless they are clear that they have a demand for the resources at other times. This is less likely to be an issue for standard taxis or private hire cars and more likely to be relevant to wheelchair accessible vehicles (WAVs) and minibuses for both of which there is far less demand.

- 5.9.8 So the question arises for THC as to what other use their contract might be paying for or contributing to the cost of. Put simply, if THC is paying for the core costs of the vehicle, is it of interest what the vehicle is used for when not being used on the school contract? This is potentially a distinction between a third sector and a commercial operator, but it is not one that is conventionally taken into account in school transport procurement because it is usually not of interest to the Education Department on whose behalf the procurement unit is operating. However, it is of interest to the Transport section (see 5.2.1 above) and is therefore a matter of corporate best value for the Council.
- 5.9.9 The issue for THC is whether awarding a school contract to a CT will indirectly result in an accessible minibus being used at low cost for other services during the day such as a mid-day dial-a-ride or dial-a-bus service. This would count as a public passenger transport service and could therefore be supported by the Council on a discretionary basis. If such a service is of interest to the Council, then what value should be attached to it and how should it be taken into account within a procurement process?
- a) One approach would be for THC to package the requirements together and to tender this package. Note that this could in effect exclude a commercial operator, depending upon the specification. For example, if the specification made reference to a minibus being made available for community use on a self-drive basis (by MiDAS accredited drivers) in order to keep the costs down this would be an almost impossible service for a commercial operator to offer. This would therefore be most appropriate for circumstances where the Council has decided that a negotiated or single tender approach is required as would be the case if no acceptable offer had been received through an open tender.
- b) An alternative approach would be for the tender to put more weight on community benefit and for an assessment system to be put in place that identifies a proxy value that the council can take into account when assessing competing bids and awarding the contract.
- 5.9.10 Both the above approaches would support CT operators using s19 or s22 permits as they would be resistant to challenge along the lines previously raised in the Judicial Review (5.8.1 above et seq.). Before the JR case, there were two Public Inquiries by the Welsh Traffic Commissioner covering the issue of a CT using s19 permits to undertake school transport contracts. In one case (DANSA) the TC determined that the CT required a PSV 'O' licence; in the other case (ACT) the TC found that the CT was acting lawfully in undertaking school transport contracts won through the Council's competitive procurement process based around a DPS. One of the distinctions in the latter case was the evidence provided by the Council's Transport Officer that a) the commercial bids were in any case above the authority's budget target and would therefore not have been awarded; b) there was a 40% quality rating; c) some work to ACT was directly negotiated under DPS rules. The JR judgment and the subsequent DfT guidance have made the position clearer as set out

above. However, it is worth noting that the Traffic Commissioner accepted that CTs can undertake school transport contracts using s19 and s22 Permits and indeed understood the reasons why they should do so but suggested to authorities that *"It might assist those entities which are genuinely community transport operations which are exclusively non-commercial, if there was a recorded but different process utilised"* to award such contracts in order to remove them, from the risk of persistent challenge. Whilst we cannot envisage a process completely outside the DPS, a consistent and publicised approach to community benefit assessment should have the same effect.

## 5.10 Miscellaneous Technical and Policy Issues

- 5.10.1 This section seeks to cover some of the questions raised in consultation with officers.

### Car Schemes

- 5.10.2 By car schemes we mean social or community car schemes involving individuals using their own car or MPV to provide lifts for others. They are recruited as volunteers and their trips are organised through a scheme organiser (who may also be a volunteer) who receives requests for transport from people who need this service. The particular criteria to be eligible for service support varies from scheme to scheme but is often focussed on social welfare rather than transport per se with trips for medical purposes being common and the majority of beneficiaries are pensioners, often with a walking difficulty. Some schemes do make it clear that they are available to anyone in the community for any purpose, but in general there is self-policing in the types of demand made reflecting that in many ways this is an alternative to a taxi or private hire car so that anyone who could reasonably afford the commercial service should be using it. Reported 'abuse' of schemes appears to be very low.

- 5.10.3 Charges are made for using such schemes and the volunteer drivers have their expenses reimbursed. Despite thus being a 'hire or reward' operation these schemes avoid either PSV or taxi/private hire regulation by means of ss1(4) and 79 Public Passenger Vehicles Act 1981<sup>18</sup>. This legislation was originally designed to facilitate car-sharing for commuters by allowing contributions towards fuel and running costs to be made by car-sharers. Although it has been adopted by social car schemes to legitimise their work it is quite restrictive. A journey is exempt from regulatory control if:

*"the fare or aggregate of the fares paid in respect of the journey does not exceed the amount of the running costs of the vehicle for the journey;"*

- 5.10.4 Note that this prevents additional charges from being made for:

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<sup>18</sup> S79 specifically excludes the application of sections 10 to 23 of the Civic Government (Scotland) Act 1982

- The driver's time
- Administrative overheads
- Booking

Consequently, a car scheme operator must find some other means of funding these. Drivers are all volunteers so that removes a critical cost but the core overheads still need to be met. Most frequently that is met or contributed to by a grant from the local authority.

5.10.5 The DfT has in guidance accepted that dead mileage associated with a specific journey, parking costs, bridge tolls, etc. do come within 'vehicle running costs'.

5.10.6 There remains the issue of how to calculate running costs. Almost every car scheme makes direct or indirect reference to the HMRC's approved mileage rates for cars and vans. These set a generous threshold for employee reimbursement payments – if paid at or below these rates HMRC considers that no taxable income occurs.

5.10.7 The rates have been fixed since 2011 and are:

- First 10,000 miles in the tax year                      45ppm
- Subsequent miles    25ppm

In addition drivers can receive an additional 5ppm for each passenger that they carry without this being taxable.

5.10.8 It is important to understand that these rates are not mandatory and that they bear no relationship to the actual running costs of a car – there is no linkage between the HMRC rates and the limits set in s1(4) PPVA 1981. The real cost of motoring has been reducing and is likely to continue to do so with the introduction of electric vehicles. Furthermore, if an organisation's policy is to reimburse the volunteer their 'out of pocket' expenses the question arises whether they should pay expenses at the marginal rate or the average full cost rate. The marginal rate would cover fuel and a proportional contribution to maintenance and to depreciation caused by wear and tear. The full cost would cover an appropriate proportion of the cost of ownership i.e. acquisition of the car, taxing and insuring it. The HMRC rates are set out on average 'full cost reimbursement principles' because they are designed for situations where an employee has to provide a car for work purposes. The s1(4) approach leans much more towards a marginal cost rate.

5.10.9 Having set out the above, the fact is that:

- a) Use of the HMRC rates is almost universal as a reference point (see e.g. Figure F below)

- b) Drivers overestimate the marginal cost of operating their cars and therefore have come to expect the HMRC rates
- c) Car schemes need to recruit and retain volunteers
- d) In some locations there is competition for volunteers between schemes e.g. St John Scotland recruits volunteer car drivers to support the Scottish Ambulance Service and reimbursement rates may be perceived as important.

**Figure F: Typical CT publicity [CT Glasgow’s patient transport scheme]**

**FAQ: VOLUNTEER DRIVERS**

> Do I need to have my own car?

> How does it affect my car insurance?

∨ Do I get paid expenses?

Yes, we pay 45p per mile plus any parking costs incurred. This is in line with HMRC guideline for voluntary drivers.

5.10.10 Car schemes face a number of difficulties in setting fare levels:

- a) If they only charge the user for ‘live miles’ (i.e. the mileage undertaken by them as passengers) then how do they cover any reimbursement they make to the driver for the ‘dead miles’ undertaken to get to the passenger pick-up point and to get home from the passenger drop-off point.
- b) If they charge the user for both ‘live’ and ‘dead’ miles then the charge for a standard journey will vary depending upon how close to the passenger the volunteer driver lives (or wherever their journey starts).
- c) Any attempt to set a zonal or standard fare would have the benefit of simplicity but might inadvertently lead to a breach of the s1(4) restriction in the case of a short distance journey.

- d) If they manage to arrange a shared journey so that there are multiple passengers, it is the aggregate of the charges which must be considered in respect of s1(4) compliance. Thus if it were determined that the running costs were 48ppm, if:
- ◆ 1 passenger travels, they pay 48ppm
  - ◆ 2 passengers travel, they pay 24ppm each
  - ◆ 3 passengers travel, they pay 16ppm each, etc.

In practice a variety of compromises have been used, as exemplified in Figure G below. We are not aware that any of these have been formally challenged by either a regulator (e.g. local authority licensing team) or HMRC.

## **Figure G: Inverness transport scheme to community health facilities**

### **Inverness Voluntary Transport Scheme can take you.**

The service operates on weekdays between 9.00am and 4.30pm. Patients are asked to pay a small charge of £5 return or £3 single toward the cost of this service.

- 5.10.11 Note that the s1(4) exemption from private hire licensing is completely separate from the exemption that applies in Scotland (abolished some years ago in England and Wales) under s22(1)(c) Civic Government Scotland Act 1982 which exempts from licensing:

*"any vehicle while it is being used for carrying passengers under a contract for its exclusive hire for a period of not less than 24 hours."*

- 5.10.12 This allows THC to contract with individuals to use their own cars to provide school transport, provided that is the only paid service that car is used for across the period of the contract, without them having to become licensed private hire drivers, using tested vehicles, etc. There is no limit as to how much they can be paid although obviously this may well raise tax issues for the individuals involved who would be considered self-employed drivers.
- 5.10.13 Given the availability of this exemption, it is in our view inappropriate for local authorities to use the s1(4) PPVA1981 path to commission school transport. In any case, once the vehicle in question is used under the school transport contract in principle it should not then be used for a volunteer car scheme journey within the next 24 hours. This would raise a clash between the two licensing systems, i.e. which exemption has priority, that the Council is advised to avoid. It would certainly raise doubts about doing work for the Council at the same time as volunteering for the car scheme.

## **Operation of small vehicles under s19 Permits**

- 5.10.14 S57 Local Transport Act 2008 extended standard Permits from just applying to vehicles with 9 to 16 passengers to include those with a capacity for 8 or fewer passengers, but only where they are used at separate fares. This enables them to be used to provide dial-a-ride services for disabled people or even to provide a 'public' service for isolated communities (remembering that in general s19 Permits cannot be used to carry the general public, only specified subsets of the public which can include those without a conventional public service). What this does not allow, however, is for such vehicles to be used to provide school transport for entitled children under a contract with THC. That is because THC would be hiring the vehicle as a whole and allocating one or more children to it but who would not be paying a fare.
- 5.10.15 Adding some additional non-entitled children who would pay fares (to THC) would not be enough to move this away from a 'hire of the vehicle as a whole'.
- 5.10.16 However, if the CT operator put on a service for non-entitled children itself, charging them individually and then THC were to buy additional individual places on that service for entitled children then that would meet the criteria of separate fares operation.

## **Paying Parents to Provide School Transport**

- 5.10.17 Under the Education (Scotland) Act 1980, a local authority is not under a duty to provide transport per se. It is under a duty to make suitable arrangements in respect of entitled students that results in them attending education. S51 of that Act provides three specific approaches but these are not exclusive. These include:
- a) Arranging free transport for all or part of the journey between their home and the relevant educational establishment;
  - b) Making bicycles or other suitable means of transport available to the pupils or their parents;
  - c) Paying the whole or any part, as the authority think fit, of their reasonable travel expenses.

On making any such arrangements the local authority is under a duty to consider the child's safety.

- 5.10.18 We note that, in contrast to the equivalent legislation in England and Wales, there is no requirement for explicit parental agreement to an arrangement other than a) above i.e. provision of transport. We are not, however, aware of any case where a local authority has, for example, offered to provide a bicycle and as a result has been able to refuse to provide vehicular transport.



- 5.10.19 There is no restriction on how much the Council can pay the parent, but clearly any payment:
- a) Must offer best value for the authority;
  - b) May create a taxable income issue for the parent;
  - c) If provided in respect of them driving their child to school in a vehicle (as contrasted with e.g. a boat), will require their licensing position to be clearly understood i.e. to confirm that they are exempt from licensing as a taxi or private hire car.
- 5.10.20 We see no legal distinction between paying expenses and providing a 'parental budget' (or indeed a student budget), although the length of commitment period (i.e. the length of time the parent commits to using this method before requesting more conventional provision from THC), the payment arrangements and the audit requirements might differ.
- 5.10.21 Nor would there be a barrier to parents in receipt of a budget coming together to share responsibilities by e.g. setting up a car sharing scheme amongst parents. Provided they have received appropriate advice on safety, their licensing status and their tax position, then the onus would be on the parents to ensure that internal arrangements were consistent with that advice. Indeed there is an analogy here to the advice and support that THC already provides to car schemes established for community transport purposes. Such a parental car club could, of course, also include parents of non-entitled children as members who would contribute to the cost-sharing.

a) Best Value

- 5.10.22 As regards a) above, it is important for the Council to consider a long-term position. The immediate effect of offering a direct payment to a parent (or an older student) could be removing them from an existing vehicle contract and leaving an empty place. There would thus be no immediate saving and direct payments are often resisted by transport staff on these grounds. However, over time, if more direct payments are made, a clean sheet reschedule will enable the authority to save one or more vehicle contracts and that will amount to a significant saving.
- 5.10.23 In the case of pupils with ASN it is worth considering that the Council would be paying the parent to provide two functions:
- a) Providing the transport;
  - b) Acting as the escort. The latter may well be worth more than the former.

This has a particular implication for direct payment schemes that are mileage related – potentially along the lines of the HMRC approved non-taxable rates set out in 5.10.7 above. Many ASN journeys will be provided for pupils who

live within the walking distance thresholds but whose mobility is restricted. An offer of a 45ppm mileage payment will be very unattractive to a parent in such circumstances; assuming that they live 2 miles from the school then they would receive  $4 \times 2 \times £0.45 = £3.60$  a day. The equivalent cost for a taxi contract is likely to be ten times that.

#### b) Tax Liability

- 5.10.24 As regards 5.10.19b) above, note that payment above the £0.45ppm does not automatically imply a tax liability, but it does mean that there will be an onus on the individual parent to take their tax position into account. It might be helpful if the Council commissioned a simple advice document to explain to parents in different personal financial circumstances how they might be affected and what they need to do.

#### c) Licensing

- 5.10.25 It may be the case that the payment to the parent comes within the 'running costs of the vehicle for the journey', particularly where a significant mileage is involved. If the parent lives 10 miles from the school and the Council pays for two return trips a day that would amount to £18 a day at the 45ppm rate – an amount that could be attractive. Note that a distance of above 13 miles would potentially mean the parent undertaking more than 10,000 miles a year after which the £0.25 rate would apply. In this case it isn't clear that 'reimbursement of reasonable travel expenses' would constitute a contract in law, in terms of any liability if there were to be an accident.
- 5.10.26 Note that if the parent were to offer a lift to another child e.g. a non-entitled child, then any payment received from that child's parent would need to be added to the payment received from the Council when considering the s1(4) threshold. For example, the parent living 10 miles a day could receive their reimbursement from the council on the basis of a 10 mile journey, but if they diverted 5 miles to pick up another child they could receive up to a further 5 \* £0.45ppm for each leg i.e. up to £9 a day from the other parent. Of course, they would hit the 10,000 mileage threshold earlier as a result.
- 5.10.27 Where the parent (or designated carer) is carrying their own child then the Council would not need to carry out safeguarding disclosure, insurance or similar checks. Similarly, if the parent makes an arrangement with another parent to carry their child then the same would apply whether that second child is an entitled child or not. This assumes that the second parent made no application to the Council to arrange transport.
- 5.10.28 Alternatively the Council could contract with the parent to deliver the transport and provided they were not using the vehicle involved for any other paid work then they would benefit from exemption from private hire licensing under s22(1)(c) Civic Government Scotland Act 1982. This would pass the tax responsibility onto the parent. But it would enable the Council to agree with

the parent that they would pick up other children – both entitled and non-entitled. For non-entitled children the Council could levy a charge under the privilege lift scheme. However, under such a contract the parent could not make their own arrangements with any other parents to provide transport as that would lead to a breach of the exemption that the vehicle is exclusively used under the contract with the Council. All children transported would need to be carried on the instruction of the Council. Under such an arrangement where the parent undertaking the contract is asked to carry a second child or more then the Council would need to carry out the necessary disclosure, licence, insurance and other safety checks.

- 5.10.29 Note that whereas operating under s1(4) PPVA 1981 does not have any impact on the individual's car insurance<sup>19</sup>, operation under a s22(1)(c) exemption would need to be reported to the parent's insurer which may well result in an increased premium as a hire or reward / commercial purpose, especially if they end up carrying more than just their own child.
- 5.10.30 Note that whilst promoting greater take-up of parental direct grants or contracts to provide transport is likely to generate savings for the Council any transfer from buses (particularly those with Euro 6 engines) will potentially be regressive from an environmental perspective and add to the peak time congestion at schools. However, this is not a simple issue of buses or minibuses being cleaner than cars because in practice many smaller saloon cars have significantly lower emissions than MPVs or minibuses. If the Council is taking active steps to reduce the carbon impact of school transport activity, then it will already be measuring the energy use and emissions from the different vehicles it commissions and will be able to come to a considered view on the environmental impact of greater parental provision.
- 5.10.31 The position set out above could be used by a smarter travel unit to promote voluntary car-sharing amongst parents. Indeed the Council might offer to pay a small amount to an organiser to cover overheads (telephone costs for example) and also pay for an occasional taxi backup as a guarantee in case the car-sharing arrangement falls over for some reason.

## **Capacity and Development**

- 5.10.32 Community transport is provided on a voluntary basis. Every CT requires a nucleus of trustees to take responsibility for organising it and enough volunteers willing to drive whatever vehicles are utilised – whether their own cars or those (minibuses or WAVs) provided by the CT itself. The scope of each CT is likely to be different, reflecting the organisers' perceptions about priority needs in their area.

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<sup>19</sup> S150 Road Traffic Act 1980 prevents the insurer from excluding s1(4) car-sharing from cover on the basis that it is hire or reward. However, some insurers have been known to offer discounts to drivers who agree not to undertake car-sharing. Moreover insurance is increasingly likely to vary according to miles undertaken, so driving a lot of miles for car-sharing purposes may result in higher premiums. But this should be compensated effectively in the mileage payment received.

- 5.10.33 The Council cannot therefore rely on either standardised CT coverage across Highland or CT operators' preparedness to undertake school transport work for the Council. Of course, through its support policies and the provision of appropriate information the Council can create an environment that will help develop more entrepreneurial third sector transport operations. But that will certainly take time and effort by Council staff and there needs to be consideration on a periodic basis of whether further investment will actually repay itself in the form of additional services or through cost savings.
- 5.10.34 Developing such a CT policy is beyond the scope of this chapter, but when considering this balance the Council should take a corporate viewpoint i.e. taking into account the impact of a CT service on the Council's core duties in respect of:
- a) Public passenger transport (including access and accessibility)
  - b) School transport
- as well as discretionary duties and powers relating to:
- c) Health
  - d) Equalities
  - e) Community wellbeing and resilience.
- 5.10.35 Our subjective observation<sup>20</sup> is that the transport team is aware of the balance and has adopted a pragmatic approach by working to develop those CTs where there is both an interest and some potential to create a 'win-win' position for both parties. The tactical placement of vehicles with CTs is an example of this approach. It is difficult to suggest that there is a better way, given the physical and social geography of the Highland area and where the gaps in provision and the more expensive current contracts are. For example, less rural authorities could support one or two CTs to scale up and for them to make a significant difference to the school transport market. In Dorset, Ealing Community Transport has established a branch operation, Dorset CT, which operates over 40 minibuses, a high proportion undertaking school transport contacts for the Council carrying children with ASN. On the back of this work DCT operates half a dozen scheduled Community Bus services for villages that have no other bus service. DCT operates in this way in the southern half of Dorset – another CT, not quite as large, operates similarly in the north of Dorset. In effect, the majority of the Council area is covered from two depots. It is difficult to see how such a model could apply to Highland where a much more distributed pattern of CT operations is required.
- 5.10.36 The approach that the Council has adopted does have the potential to create significant benefits when applied to locations where above average school

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<sup>20</sup> Examining the wider CT policy and practice in detail has not been within the brief for this project

contract costs are faced. For example, we were informed of a particular current school transport contract, linked to a twice weekly shopper service that is costing the Council around £100k a year. It would clearly be worth encouraging and funding a CT operator to establish / develop to undertake this work (and THC has been progressing this) as the likely costs would probably not exceed 50% of the current cost and this would therefore:

- a) Save public money, thus freeing it up for other services or contributing to the budget savings the authority requires;
- b) Support a CT facility that would provide additional community value when not delivering the school and shopper services;
- c) Demonstrate to the commercial market that THC has a defence against potential price gouging and will deploy it.

5.10.37 Whilst this chapter has focussed on school contract issues, the same principles apply to the challenge that THC faces in delivering a public transport network across Highland. Private motoring has become ever cheaper relative to the cost of public transport and the choice created by car access means that the locations where facilities are based have spread out and the times for access are less focussed. All this makes it more and more difficult to operate sustainable collective bus services i.e. get enough people travelling together at the same time to be able to pay for the cost of the driver and the vehicle and overheads. This has become an even more significant issue because the main operators were reviewing their business models and costs even before Covid-19 but are now in a more challenging economic position as bus patronage seems unlikely to return to pre-Covid levels in the immediate future. Thus a significant part of the network that was previously commercially self-sufficient is unlikely to be so in the future which will lead to an expectation that the local authority will provide additional financial support. If there is a resulting shrinkage in operations this will mean that unit costs (and the cost of contracts faced by THC) go up as fixed overheads need to be spread across less activity. In some cases this will result in depot closures and we understand that THC has already seen some of this.

5.10.38 In this scenario, community transport has a useful role to play in a number of ways:

- a) Offering a range of services that may still provide an accessibility safety net for those in most need – social car schemes are a case in point. These can operate alongside a community bus service to provide a more comprehensive geographic and time coverage than a simple bus service can offer.

- b) Reducing costs particularly through the use of volunteers, both to organise the transport (saves management overheads) and to drive it (saves the largest single cost component – ca 60%); this can bring commercially marginal services back into long-term sustainability. It is worth noting that the track record of Community Bus services since the first ones were registered in 1978 has been fairly solid. Relatively few have ceased to operate<sup>21</sup>.
- c) Local marketing and engagement within the community to promote collective travel and to link use of the bus service to local facilities.
- d) Offering particular support to older people and people with disabilities. Where a CT can deploy a volunteer there is minimal cost of time within the journey which means that it can be delivered at a pace that matches that of the individuals who may have impaired mobility. This often means that the CT offers a 'transport +' service by supporting the passenger into their destination and potentially waiting with or for them.
- e) Offering services at a local scale – the scale required for sustainable operation is lower with a CT than for a commercial operator. Indeed, there are examples, including within Highland, where a commercial operator has contracted with a CT to provide a service which the operator themselves can no longer afford to deliver.
- f) Some facility to attract funding from other sources as well as from the local community.

5.10.39 The pressures on rural public transport identified above are forecast to continue. This does suggest that greater weight will need to be placed upon facilitating community 'self-help' solutions. Until autonomous vehicles are in practical operation, any passenger transport operation faces the need to meet the cost of the driver. As yet, no amount of new technology has made any impact on this. The ability of CTs to attract volunteers from within the communities served is clearly very important for sustainability.

5.10.40 In this respect it is worth noting that there is particular interest nationally in the latest generation of DRT (Demand Responsive Transport) services booked through Apps on smartphones or PCs. Despite the technological innovation which certainly does offer a measurable improvement in service to some users (who can use the technology effectively) these DRTs have had extremely limited success in rural areas. Most CTs already operate one or more of their services on a demand-responsive basis. Rather than duplicate this by overlaying the new DRTs it would seem to be more efficient and effective to provide the opportunity to willing CTs to step up and adopt the new technology and to integrate it with their existing offerings. We understand that one such pilot is currently being considered in Highland – the results will be very interesting to observe.

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<sup>21</sup> There are, of course, some failures e.g. the long-standing Ettrick and Yarrow minibus in the Scottish Borders.

## State Aid / Subsidy

- 5.10.41 A general question arises as to how to manage situations where a CT might be grant aided to provide a community service and might also tender to undertake a school contract. This could constitute unfair competition if the CT were able to utilise resources (financial or otherwise) gained through grant aid to lower the cost of its bid to the Council for the school contract. Moreover, it could possibly involve the Council double funding certain functions e.g. the contribution to management overheads.
- 5.10.42 This issue was subject to a complaint by a group of commercial operators to the European Commission some years ago alleging a breach of EU State Aid rules by Derbyshire and Nottinghamshire County Councils. Following a lengthy investigation the Commission issued a judgment in 2015<sup>22</sup>. It dismissed the complaint against Nottinghamshire because the value of State Aid they provided was below the threshold. In Derbyshire's case the decision was that there had been a breach of the State Aid rules - any funding above the threshold that has the potential to distort the market and is not covered by one of the specific exemptions available has to be submitted for approval to the Commission in advance. This did not happen and the UK was in breach of its treaty obligations. However, the Commission decided that the aid that was given to CTs was in practice compatible with the functioning of the internal market in that there was no "distortion of competition contrary to the common interest".
- 5.10.43 This case was decided on very specific facts and does not set a particular principle. It does, however, demonstrate that this is not a simple binary matter. To assist resolve the problem the DfT issued guidance on State Aid to CTs and their funders<sup>23</sup> and this was noted and accepted by the European Commission as effective mitigation by the UK of their breach.
- 5.10.44 The UK has now left the EU and the State Aid rules no longer apply. Consequently we do not propose to set them out in any detail. There are some simple messages to take from the DfT guidance and the Commission decision.
- a) If Derbyshire had combined its community transport (grant aided) requirements and its school transport (competitively tendered) requirements into a single package then the issue of cross subsidy from one to the other would not have arisen. It could have included social value as an assessment criterion when commissioning and awarding such a contract.

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<sup>22</sup> State Aid SA.34403 (2015/NN)(ex 2012/CP) 04/06/2015

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/394672/150112\\_-\\_DfT\\_CT\\_State\\_aid\\_guidance\\_for\\_Local\\_Authorities\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/394672/150112_-_DfT_CT_State_aid_guidance_for_Local_Authorities_Final.pdf)

- b) In the absence of that approach, transparency is required. The CT must be asked to identify any publicly funded resources that it proposes to use on the school transport contract and a check undertaken to ensure that the total funding received for those resources is below whatever the current de minimis threshold is. Note that national lottery funding counts as public funding.
- c) If there is a danger of breach then the CT cannot use those resources in delivering the contract. It should use a full cost recovery costing model to identify the cost of replacement resources to be included in the bid.

5.10.45 The UK government (this is not a reserved function) is in the process of replacing the State Aid rules with a new Subsidy Control regime (a Bill is currently going through the UK parliament). This is required to meet our obligations under World Trade arrangements as well as to the EU under the withdrawal agreement – the Trade and Cooperation Agreement (TCA) contains obligations on both parties to control the granting of subsidies by public bodies.

5.10.46 The Subsidy Control Bill:

- Covers subsidies relating to cross-border trade but also to internal subsidies (i.e. preventing an 'arms race' between different parts of the UK to attract employers through subsidy)
- Has a fixed 'de minimis' threshold of £315,000 over a rolling three year period. This is higher than the previous State Aid threshold.
- Contains a list of principles, compliance with which will mean that payments to an entity are permitted even though they may be subsidies.
- Provides for the Competition and Markets Authority to be the 'Independent Authority' which will monitor subsidies and take action.

5.10.47 At this point it is impossible to predict exactly how the new law will be interpreted at the level of detail that applies to consideration of CTs, grant aid and contracts. However, given the scale of most CTs in Highland and an average annual subsidy of £13,800 per group it seems unlikely that there is much danger of the grant aid received by an individual CT exceeding the new de minimis threshold.

5.10.48 By the time there is any such danger, the new rules will have been enacted and there will be copious associated guidance. Detailed analysis on State Aid and community transport that TAS undertook for an English local authority demonstrated a number of ways in which community transport could receive grant aid without that contributing to the 'de minimis' threshold – for example there were specific exemptions to funding for training (e.g. MiDAS) and skills development. We expect that the same if not greater flexibility will exist under the new regime.



## 6.1 Introduction

6.1.1 This chapter covers the area of service monitoring and how operational standards are maintained by THC. It also incorporates the observational visits that were undertaken at four schools in June 2021 by Puwertec. The full reports from Puwertec have been circulated separately and discussed with THC staff where action needed to be taken.

## 6.2 Service Monitoring

6.2.1 The purpose of monitoring of transport services is primarily for THC to:

- ensure that contract specifications are being met – to ascertain that providers deliver what is required in the contract, that value for money is achieved and an audit trail is created;
- ensure that quality standards are being met, that providers meet the appropriate levels of customer care and satisfaction and that passengers and third parties are safeguarded from risk; and
- collect data around its transport provision to inform revisions to current contracts and future service specifications and procurement approaches – this might include data around routing, scheduling, capacity, reliability / punctuality and general market intelligence.

6.2.2 Effective monitoring can be said to require a system of measurement and a methodical data collection process, as well as the allocation of sufficient staff time. THC lacks a robust approach to monitoring and has traditionally allocated a low level of staff time given the scale of contracts that are in place. One challenge is the Highlands geographic area which limits the amount of monitoring time that might be devoted to each operator when travel time is factored in.

6.2.3 Additionally, THC does not currently have use of technology to collect data, or to deploy a management system that can meaningfully process such data in order to enable smart choices to be made regarding how tender specifications are put together or modified. This subject is covered in more detail in a separate chapter below about management processes and potential software solutions.

## 6.3 Quality and Safety Standards

6.3.1 In respect of the full range of school transport operations there is no national best practice reference specification covering quality or safety. THC is aware of this situation and see this as a developing area in the context of what is perceived to be a local passenger transport sector that is relatively safe and reliable. THC has no recent history of major or serious incidents or accidents. It is recognised, however, that this is not an adequate position to adopt regarding the Duty of Care that THC owes to the young people for whom it arranges travel support or transport and that THC has a responsibility to determine the operational standards required to minimise risks and to safeguard pupils, staff and the wider public and to ensure that such standards are complied with.

6.3.2 THC's approach to establishing and maintaining safety standards typically involves the following:

- a) use of proxy transport operational legislation (DVSA, Traffic Commissioner, taxi licensing) as a baseline – this might involve (at minimum) checking driver and operator licences, vehicle MOT and insurance;
- b) partaking in the Disclosure Scotland / Protecting Vulnerable Groups (PVG) Scheme;
- c) stipulating standards as part of acceptance on DPS / framework and contract clauses and checking compliance on contract award – in addition to a) above, this might involve more specific training or vehicle accessibility standards being met;
- d) monitoring ongoing standards via inspections – a mixture of annual checks plus random spot checks; and
- e) promoting and offering additional training through the term of the contract – for example, to meet changing legislation or to promote development.

6.3.3 The standards are set down as follows:

- School Transport Policy Para 8: Safety and Supervision on Transport – applies to all providers;
- Contract SPT Framework Final Schedule B – Transport of School Children – applies to contractors, who are responsible for vehicle and driver standard compliance;
- Handbook for (in-house) fleet drivers – still work in progress. There is only the SLA that otherwise covers internal operations and this does not adequately cover quality standards.

- 6.3.4 Passenger assistants (PAs) are engaged by schools and subject to standards that the schools require. We understand that some schools are better than others with this regard, with the ASN schools being generally more 'on the ball'. A generic handbook for PAs is also in progress. The current devolved system does allow for a variation in the way that PAs approach their role. Traditionally one might have proposed moving responsibility for PAs to the PTU to ensure consistency and alignment of standards and protocols for drivers and PAs. However, there are advantages from having PAs based with schools in terms of understanding pupils' needs and liaison with parents as well as their potential role as teaching assistants or support staff within the schools' establishments. There is also the potential for PAs to be provided by operators as part of the school transport contract. This can result in lower costs as the mileage required to pick the PA up at the start of the route transfers to operators, and generally PAs employed by operators work on more competitive terms and conditions. To manage this relationship which is at arms' length from the PTU, it should be possible to deliver greater service consistency by improving digital communication arrangements between the PTU and the PAs directly, and introducing regular refresher training as part of their continuing professional development.
- 6.3.5 In general, the approach is not as comprehensive or up-to-date as it might be, though it is noted that there have been no major issues or concerns relating to operational standards. KG has been working to improve the approach on this since her appointment in August 2019. There has been an unwillingness to be too prescriptive with external providers due to the current fragility of the market and need to keep the providers on board with the improvements that THC wants to make.
- 6.3.6 The overall standards to be adhered to should be derived from a dual approach: firstly the client department (in this case Education & Learning) who should best understand pupil needs (and their overall well-being) and secondly Transport, who might be expected to look after any technical or practical safety measures related to vehicle operations. There should be an agreed service specification that is underwritten as part of any contract with external providers and SLA with the in-house provision.
- 6.3.7 At present the in-house fleet operates outside of the procurement regime and is subject to standards and expectations that are not clearly set down or subject to monitoring. As until recently Community Services handled both transport contracts and the fleet operation, it is understandable that there has been no separation between commissioning and delivery, nor any compelling reason to impose what might seem to be an artificial process.

## **6.4 Training**

- 6.4.1 Front line staff training is a relatively weak area, both in terms of THC specifying and detailing what it requires and the practical issue of delivering

training (geographical access to centres where training can be provided, lack of internet for remote learning) across a wide geographical area. There are many taxi operators who are not responsive to web-based communications. There is no uniform, minimum standard that is in place. This does not, however, justify THC's current position. Training does create logistical challenges but a proactive strategy is needed to address the situation.

- 6.4.2 External providers are left to ensure that drivers are adequately trained. It is not clear that the use of Wheelchair Tie-Down and Occupant Restraint Systems (WTORS) is as good as it might be (Puwertec inspections bear this out – see below). This is a problem that is not specific to THC; experience elsewhere suggests that a small minority of commercial providers will 'train' their own drivers in-house, without adequately covering what is required (even to the extent of issuing MiDAS certificates to their own drivers without their having done any practical sessions).
- 6.4.3 Safeguarding / Protection training is cited in the Framework (see below) but it is unclear to us whether this is properly delivered or achieved in practice. Safeguarding has been a critical concern for a number of years throughout the UK and despite varying delivery approaches (from classroom type sessions to entirely remote learning) it has become a staple of much induction for front-line or customer-facing personnel, especially in the social care sector and taxi industry. Moreover, this issue has been picked up by the Scottish Public Services Ombudsman with regard to Angus Council (2017), who were criticised for failing to provide child protection training for drivers – see Chapter 2 for details.
- 6.4.4 Schools are responsible for Passenger Assistant (PA) training. It has been suggested that PAs should receive training in WTORS, although there is a danger that responsibility might be seen to have shifted from the driver, or fall between the two parties, each thinking it is the other's responsibility. The split of responsibility between the determination of training standards for drivers and for assistants can lead to a mismatch or lack of alignment. As mentioned above, it is not clear to what standard each school is actually training its PAs. Moreover, there needs to be clear guidance as to how a driver and PA work together.<sup>24</sup>
- 6.4.5 Fleet driver training is centred on the CPC<sup>25</sup> system. This is designed primarily for maintenance of standards in the bus and coach industry and is flexible in terms of the kind of training that is accepted. For the council's fleet situation, the approach does not necessarily ensure a uniform standard as the content might be formed of different, individualised training components. It would be possible for THC to create a 'curriculum' of only relevant and desired training to be accessed by drivers.

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<sup>24</sup> This issue is dealt with in both MiDAS and PATS training for drivers and PAs respectively.

<sup>25</sup> Driver Certificate of Professional Competence – this is a mandatory requirement for holders of full D or D1 driving licences and involves undertaking 35 hours of training within rolling 5 year periods. The training must be accredited by the JAUP (Joint Approvals Unit for Periodic Training) which works on behalf of DVSA (Driver & Vehicle Standards Agency) to regulate compliance with The Vehicle Drivers (Certificates of Professional Competence) Regulations 2007.

- 6.4.6 It is worth noting that although the in-house passenger transport operation is not undertaken under a PSV Operating licence, any failures in respect of vehicle or equipment maintenance or vehicle operation (e.g. driver actions in respect of passenger safety) could be taken into account by the Traffic Commissioner when considering THC's HGV Operating Licence, on the grounds that such failures represent a general failure to manage a certain number of vehicles, whether HGVs or not. Any failures on the passenger side therefore create a risk that the number of HGVs that the Council is entitled to operate would be reduced, which would have significant operational and financial implications.
- 6.4.7 Entry onto the DPS requires bidders to "*provide examples that demonstrate that they have the relevant experience to deliver the services/supplies as described*". This forms one of the ESPD responses on technical and professional ability (4C.1.2) and would in principle not only enable THC to disqualify a non-compliant bidder, but to understand the general level of training that might be in place. However, it is unclear the extent to which the Council's assessment of responses includes a requirement for the operator to demonstrate that they have a detailed training programme in place – THC consider that most operators would need some level of support to produce such a programme.
- 6.4.8 The DPS / Framework for external operators *Part B – Transport of School Children* (clause B4.14) states that "Contractors must comply with principles of child protection as issued by The Authority from time to time and must notify any concerns about child safety or welfare to the Deputy Authority's Representative, using a method which ensures confidentiality. Email should not be used for this purpose". This clause on protection refers only to a compliance with the 'principles', which falls well short of stipulating that such training should, in fact, be attained. As each local authority area has in place its own protocols and guidance decided by a local board, general principles would have limited usefulness. At minimum, the clause might have made reference to the principles of the local protection board for the Highland area (see <https://hcpc.scot/wp-content/uploads/2020/04/Final-Highland-CP-Guidance-2020-COVID19-VERSION.pdf> <http://www.forhighlandchildren.org/5-practiceguidance/>).
- 6.4.9 In particular, there are two e-learning courses available on the CALA<sup>26</sup> (Care and Learning Alliance) website which could be useful:
- Introduction to Child Protection - <https://calaelearning.co.uk/product/introduction-to-child-protection/>
  - Introduction to Child Sexual Exploitation - <https://calaelearning.co.uk/product/introduction-to-child-sexual-exploitation/>

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<sup>26</sup> Care and Learning Alliance (CALA) is the largest third sector early learning and childcare organisation serving Highland and Moray.

The latter would be particularly relevant to the taxi and private hire industry which has been a vector for such exploitation elsewhere.

6.4.10 Clause B5.8 states that *"The Authority may specify training needs for escorts and drivers on Contract Routes transporting children with additional support needs. Such training shall depend on individual circumstances but may include:*

- *Lifting and handling*
- *Securing of wheelchairs*
- *Awareness of medical conditions*
- *Behaviour management and conflict resolution*
- *Emergency procedures."*

6.4.11 Whilst this training would provide valuable coverage of all the basic skills required for the carriage of ASN pupils, it is not proactively imposed or monitored by the Transport Unit or schools and the training cited does not align with an accepted external standard such as MiDAS. The clause puts the onus on THC to 'specify' the training rather than organise its delivery, but there is no further detail to this specification. Moreover, the use of the word 'may' suggests that the training is not necessarily required as a contract condition unless THC at some stage requires the option to be taken up. This optional approach might be justifiable if, for example, the provider has already demonstrated in the answer to the ESDP question 4C.1.2 that such training has been completed.

## **6.5 Traffic Management / Safety Issues**

6.5.1 The practical safety of school sites is an important consideration given that the bulk of vehicles (staff, parents and school transport) arrive or depart within a similar time window, so there may well be traffic movement as other pupils arrive on foot or as those travelling in vehicles disembark or board. Whilst the newest establishments will have taken motor vehicle access into account in their site design, this is not the case for older establishments, especially given the growth in vehicular traffic in the past twenty years and where there simply isn't room on site for segregated traffic movements.

6.5.2 Responsibility for imposing safe systems here has been left entirely with the school and as with other issues, some are better than others at managing risks and implementing safety measures. It is not clear where or when the decision was made whereby the school takes entire responsibility for developing safe systems or whether there is any detailed central requirement for schools to manage transport movements – for example, that there is always supposed to be an identifiable duty person to meet transport at drop

off sites. The risk assessment process between transport providers and schools does not appear to be joined-up.

- 6.5.3 Arrangements need to reflect the fact that whilst the school has clear responsibility as the property manager for on-site safety, their ability to control behaviour immediately outside the site on the public highway is limited. Moreover, although the schools employ any Passenger Assistants (PAs) accompanying vehicles, not every vehicle has a PA. And the school does not directly instruct vehicle operators as to the behaviour of their drivers; it is the drivers, ultimately, who have responsibility for the safety of passengers whilst they are on the vehicle. They are instructed by their employers, the operators, who receive instructions from the Transport Unit, acting on behalf of the authority's Education function.
- 6.5.4 In addition, where any of the commissioned school transport has to board and alight on the public highway or other location away from the school site, then that needs to be taken into account by the Council under its Roads function as it applies this to school traffic.

## 6.6 Driver ID

- 6.6.1 All drivers carry photo ID of some kind but these are not uniform or related to an approved training or vetting standard. Taxi and private hire car drivers carry badges issued by their licensing authority which may be linked to training and other standards depending upon the authority that issued the licence. Staff drivers have employee IDs. Bus drivers have badges from their employer. However, drivers of cars that are contracted in under the exemption from licensing contained in s22(1)(c) Civic Government (Scotland) Act 1982<sup>27</sup> would not carry any driver ID.
- 6.6.2 The situation in practice is that there is no meaningful linkage between ID badges and any central 'approved driver' system relating to school transport. Having said that it should be acknowledged that away from the towns, ID is generally not an issue in Highlands where vast majority of drivers are well known and recognised.
- 6.6.3 The DPS / Framework states (*Part B: Transport of School Children* clause B4.14) that "*The Authority shall issue badges to approved drivers. These shall be worn at all times during the performance of the Contract.*" This badge issuing does not appear to have been imposed in practice and during the Puwertec observations several drivers were observed not to be wearing any kind of badge.
- 6.6.4 Passenger Transport is not involved in any vetting process for volunteer drivers for school minibuses (owned or hired), as this lies with the school – the

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<sup>27</sup> The requirement to be licensed does not apply to "any vehicle while it is being used for carrying passengers under a contract for its exclusive hire for a period of not less than 24 hours."

qualification is being a parent, relation or other person involved in supporting the school who is willing and able to drive (being MiDAS trained). MiDAS does not in itself signify that a driver has been vetted. This is an issue where schools use community transport during the day and volunteer drivers may be subject to a different vetting regime.

## 6.7 Monitoring

- 6.7.1 THC approaches contract management through dialogue with providers and contact through its 3 area-based Transport Officers (and 3 Assistants). Schools play a large part in this (in theory) but approaches vary from school to school as to the extent to which they actually monitor the transport, inform the transport unit about any issues and/or sort them out directly with providers. In general, the approach is not proactive.
- 6.7.2 For a long period, COVID-19 has effectively halted any on-site monitoring. But in any case THC's approach has not been especially systematic. Before COVID, only occasional spot checks took place, with much reliance on schools to monitor on site and mostly responding to issues through dialogue between Transport Officers and operators. Few penalties or sanctions have been applied - however, given the low level of spot checks, this cannot be taken to signify that issues have not occurred and gone unreported.
- 6.7.3 The draft SLA between Community Services and Care & Learning<sup>28</sup> includes the following: *"Schools should inform Community Services as soon as practicable of any defaults (such as, for example, insufficient capacity or late running) which they are aware of in the operation of any contracts. In cases of persistent defaults, Community Services may ask schools to keep a log in respect of a particular contract"* and *"Community Services staff will monitor contracts on-site from time to time and may target particular contracts in response to information received from schools."*
- 6.7.4 The contract with operators makes clear that THC is empowered to undertake monitoring inspections and to impose sanctions in cases of non-compliance. However, there are no examples during the last four years of contracts or other arrangements being terminated following monitoring.
- 6.7.5 There have been instances where school bus drivers have picked up non-entitled pupils without charging them but to check how often this happens would require identification through spot checks. This is an issue which potentially creates a child protection and possibly (although unlikely) an insurance problem that may not be picked up because the school may assume that travel is officially sanctioned but the passenger transport service is not aware of the fact that certain non-entitled pupils are travelling on the service.

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<sup>28</sup> Service names are given here as they appear in the document.



## 6.8 Puwertec Inspections

6.8.1 Puwertec (specialist vehicle safety auditors) undertook inspections at four schools in June 2021:

- Drummond
- Inverness Royal Academy
- St Clements
- Bun-sgoil Ghàidhlig Inbhir Nis

6.8.2 The nature of the visits was such that THC selected the locations to include primary, secondary and special schools within the time available and to include a significant number of ASN routes. The inspections did not purport to be exhaustive in that only a small number of operators could be observed at any one time and the findings do not reflect observations of operators whose vehicles and / or practices gave no cause for concern. The focus was largely on operators carrying ASN pupils – these are the passengers who are arguably at the highest risk and for whom safety measures are more exacting.

6.8.3 Table 17 below summarizes the key findings from the visits.

**Table 17: Summary of Puwertec Observation Visits**

School	General Site Comments	Site Staff	Operators	Recommended Actions
Drummond	Site arrangements were generally satisfactory although all types of vehicles used the same area and needed to reverse into position.	No banksmen used during reversing, otherwise generally well supervised.	5 vehicles had passenger restraints incorrectly used. 5 vehicles had wheelchair restraints incorrectly applied. 2 vehicles had incorrectly fitted ramps. There was a total of 12 defaults across 8 vehicles / operators.	Due to the evidence of inadequately secured wheelchairs and poor application of passenger restraints, emergency awareness training should be carried out at the earliest opportunity, to involve both Drivers and Passenger Assistants.
Inverness Royal Academy	No identified risks.	No staff presence.	No identified risks.	None.
St. Clements	Risks exist due to the sheer numbers of vehicles accessing the areas throughout the day, faded road markings and a requirement to reverse into position.	No banksmen used during reversing and lack of site supervision.	2 vehicles had passenger restraints incorrectly used. 4 vehicles had wheelchair restraints incorrectly applied. 3 vehicles had issues with practices on lifts or issues with side access. There was a total of 9 defaults across 3 vehicles / operators.	Assess the requirement for adequate lighting for winter months. Improve the faded Delineation of the area. Review the car park area to provide separation between passengers and vehicles. Minimise access to the site during boarding and alighting times, possibly using cones to reduce entry. Due to the inadequately secured wheelchairs and poor application of passenger restraints, emergency awareness training should be carried out at the earliest opportunity, to involve both Drivers and Passenger Assistants. There should also be an element of passenger lift safety training. Where passengers are required to access the vehicle via the steps, there should be an expectation that this is carried out safely adhering to manual handling regulations.

School	General Site Comments	Site Staff	Operators	Recommended Actions
Bun-sgoil Ghàidhlig Inbhir Nis	No identified risks.	No staff presence.	No identified risks.	None.

6.8.4 Whilst the Puwertec inspections remain a 'snapshot' of one day, it is clear from conversations with drivers that the irregularities noted above reflect long-standing habits and practices and so the risks to which pupils have been exposed has likely occurred each time they have travelled. These inspections highlight a small percentage of the operators involved and it is arguable how far they can be considered representative.

## 6.9 Future Issues for Highland Council

6.9.1 The Puwertec findings highlighted a number of lapses in the correct use of vehicle and restraining equipment during journeys to and from school. The sample of negative observations made involved 11 different operations or vehicles and it is difficult to draw conclusions as to how representative these malpractices are across the full range of contractors. Given that even the most exacting and precise contract specification and monitoring regime will give rise to some degree of variability in operator performance, it should nonetheless be assumed that the Puwertec visits have identified a weakness that may well be more widespread.

6.9.2 The following actions are recommended (in order of priority – highest to lowest):

a) **Training** – a specification should be drawn up in more detail and arrangements should be put in to place for training sessions to be provided by external trainers. This would need to be undertaken in batches over a period of time until all drivers have received the training. The focus for the training should be

- ◆ Use of WTORS and
- ◆ Protection / Safeguarding.

There remains the issue of the adequacy of the current training of assistants and whether the schools can collaborate on a joint training initiative, or whether a separate training package can be adopted for assistants.

Puwertec has included assistants in the training recommendation, although the observations did not highlight any lapses or malpractices on the part of the PAs. There would be the option of discussing a joint effort with the taxi licensing sections of both THC and (if relevant i.e. where the vehicles are licensed) neighbouring authorities.

(We have provided as an Appendix a separate Training Specification for THC to consider).

- b) **Vehicle Conformity** – as it is not clear what vehicle checks are being undertaken by THC at the commencement of contracts and as some vehicles have been observed as being fitted with apparently non-compliant ramps. Where such vehicles are identified, operators should be instructed to make any necessary adjustment or modification.
- c) **Site Arrangements** – it is accepted that the Transport Unit does not have direct responsibility regarding the safety arrangements at school sites (either school staff functions or infrastructure). However, a dialogue should be entered into with Education around risk assessments for each site and whether any of the issues highlighted by Puwertec (and also potentially relevant at other sites not visited) can be improved.

(We have separately provided a draft site assessment framework.)

- d) **Monitoring Regime** – it is clear that even at pre-COVID levels, the extent of monitoring was inadequate, both in terms of the number of hours that THC staff could devote and the thoroughness of approach. Whilst there is no formal guidance baseline as to what an adequate level of monitoring comprises, TAS has undertaken research amongst English local authorities which indicated that the better authorities expended the staff hours equivalent of 2% of the total contract value, whilst the average was 0.75%. In the Highland context, with contracts of £13m value, this average value would equate to £97,500 – over three FTE staff posts. However, it is acknowledged that since this research was undertaken time financial cuts have compelled many authorities to reluctantly reduce their commitment to contract monitoring. Even so the large scale of contractors in the Highland does suggest that monitoring should be given a higher priority.
- e) **ID Badges** – THC should ensure that ID badges are issued to approved drivers. Authorisation of drivers is important when personnel are likely to change through the course of a contract term, although in Highland the minimal churn of personnel in the transport sector does not suggest that badging is needed to assure passengers that drivers are authorised as most are known and recognised in their communities. In general, ID badges should assure pupils, parents and carers that the driver is:
- ◆ approved to drive by the operator – an embossed photo and signature should safeguard against fraudulent use;
  - ◆ vetted with Disclosure Scotland / PVG;
  - ◆ trained and qualified to meet the standards required.

A contract clause requires THC to issue badges (see 6.6 above).

- f) **Contract Revisions** – as part of this review TAS has made a number of suggestions for revision to THC’s Conditions of Contract document. This would be more of a priority for future contract drafting, although a) to e) above can be implemented within the current terms and are not dependent on any changes to the current terms.

## 6.10 General Summary

- 6.10.1 THC is balancing a ‘soft touch’ approach to contract management with the legal duties to safeguard pupils’ welfare. Through good relationships with providers and the familiarity of close communities, the operational conditions of home to school transport in the Highlands are not readily comparable to other locations. The fragility of the local passenger transport market is understood and THC does not wish to disrupt this to the degree that its providers are deterred from bidding for and delivering contracts.
- 6.10.2 However, the ability for THC to continue with this approach should be questioned – objectively it does not best ensure the council overall duty of care is being met. It is clear that THC’s position would be compromised in the event of a serious incident. The six measures above should be introduced in a phased way for external contractors. With the in-house fleet, there is need for the Driver’s Handbook to be finalised and for some means of accountability to be introduced via the proposed SLA. The in-house fleet should be subject to a range of quality standards and checks commensurate with those proposed for external providers.

## 7.1 Introduction

7.1.1 The purpose of this chapter is to describe the information systems currently used by THC Transport Officers (TO's) to manage the business process for mainstream and ASN transport, and to recommend requirements for a new system.

**Table 18: Information Systems Deployed**

Name	Description	Host/Owner
Pupil List	Spreadsheet created to keep track of pupils travelling on school transport provided by THC. It also includes parental contracts, in-house buses and pupils who are not eligible for free transport but who have been offered and / or are paying for a privileged place.	PTU
One Scotland Gazetteer Google maps Maproom/ArcGIS	Eligibility for free school transport is determined based on the age of the pupil and the distance from the school considering safe walking route	ICT Services
SEEMiS	Education Management Information System. Range of modules to support Pupil and Staff record management	Education & Learning
School enrolment form (includes a section for transport if required)	Web based form with interactive map to locate pupil address and pick-up point.	Education & Learning
School Transport Application Form	Web based form with interactive map to locate pupil address and pick-up point (for use if pupil is already enrolled). Printable form is also available from Transport Unit.	PTU
Integra	Corporate finance and accounting system	Resources & Finance
Office365	Microsoft Office Suite	ICT Services

7.1.2 The PTU is looking to replace the Pupil List with a proprietary H2S contract management system and has reviewed the specification developed by Aberdeenshire Council, which they used to tender for a new transport bookings, scheduling and contract management software.

7.1.3 The Pupil List was created by a staff member who is no longer in the PTU but is available to provide support on an ad hoc basis. This is unsatisfactory from a business resilience and continuity perspective. In addition, the Pupil List does not include many features that are standard in bespoke H2S software packages and is although it uses downloads from SEEMiS, it is not integrated with accounting systems that the TOs need to interact with.

- 7.1.4 Nevertheless, the Pupil List is designed to perform the essential functions required to manage the H2S transport process, so any new system should replicate these in a more robust and streamlined manner as well as provide additional functionality in a user-friendly interface. There are several commercial off-the-shelf H2S transport programs that are available with a proven track record in the UK market. Most have capabilities to be hosted locally or remotely in the cloud and deploy the latest web-based technologies, allied to communication technologies for monitoring vehicle performance and compliance. Most vendors are familiar with the ICT network environment deployed in local authorities and can meet the required data protection, cyber security and other protocols mandated in ICT policies, so the PTU can be assured that these programs will comply with the council's ICT standards.
- 7.1.5 The review of business processes below identifies the key functions that need to be retained as well as highlighting additional features that should be included in the software specification.

## **7.2 Mainstream pupils - business process**

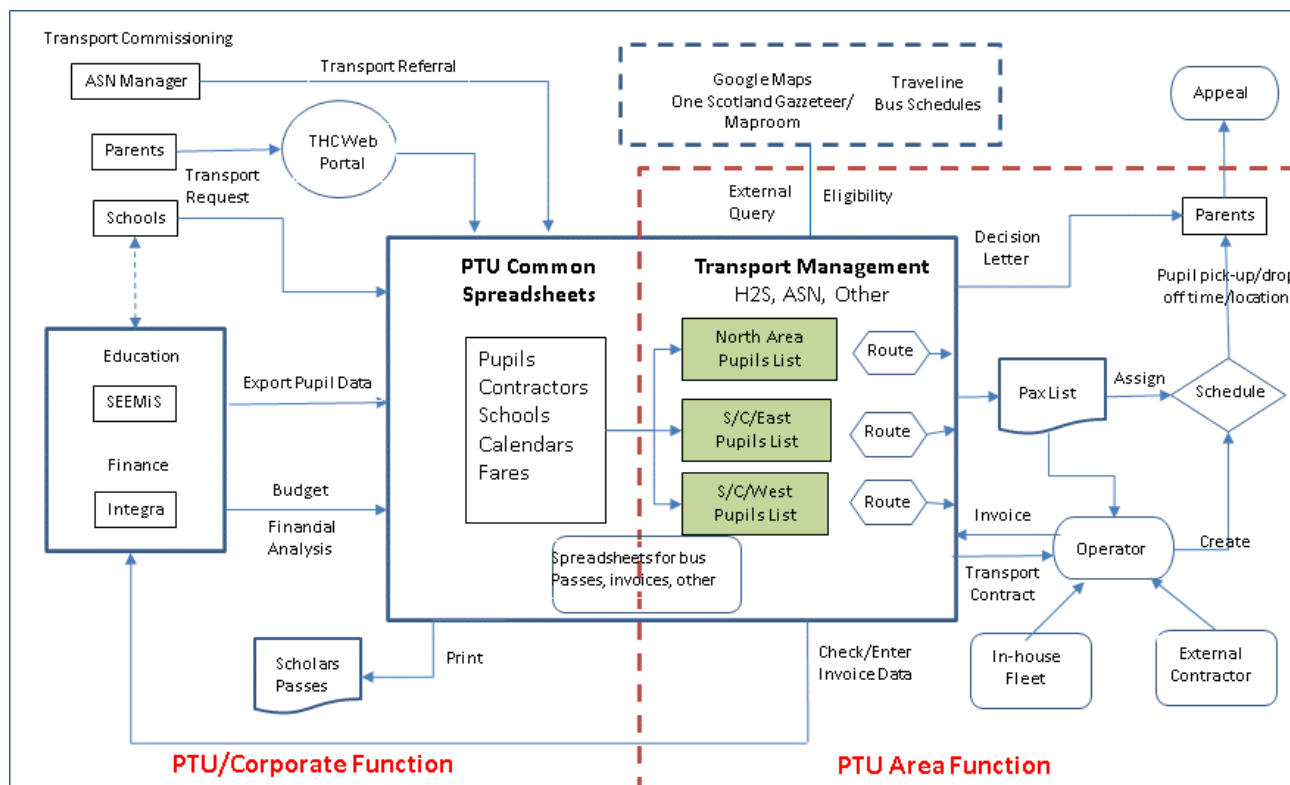
- 7.2.1 The current business process is summarised in the diagram in Figure H. A description of the critical procedures follows.

### **Eligibility Checking**

- 7.2.2 Parents submit transport requests via the council's web portal on the Education & Learning page of the council's website. Alternatively, they can fill in a hard copy form that is submitted via the school.
- 7.2.3 Once received the essential information is entered into the Transport Tab on the Pupil List (PL) spreadsheet unless it already exists; for example, a primary pupil on school transport (P7) transferring to a secondary school (S1). The Pupil List spreadsheet can be checked to ensure that eligible pupils are not missing from the transport list when transferring from primary to secondary school.
- 7.2.4 New applicants are checked for eligibility for transport using the distance criteria. Other factors can also be taken account of such as safe walking route along the road. Distance is measured using Google maps that measures the road distance from the pupil's address (confirmed using the One Scotland Gazetteer) to the school. TO's have access to Maproom on ArcGIS that shows the school locations and catchment areas and has a measuring tool. Google mapping can be accessed from the Pupil List spreadsheet.
- 7.2.5 The tools are not always precise and TO's have occasionally to do site visits or make more detailed investigations. A more accurate distance measuring tool would be helpful to the TO's especially where the distance margins are tight and sometimes the Road Safety team is asked to measure using their CAD system. If a pupil is deemed ineligible a letter is sent to the parents denying

the request for transport, which the parents can then appeal. Children not eligible for free school transport can pay for a place on the bus if there is a space available.

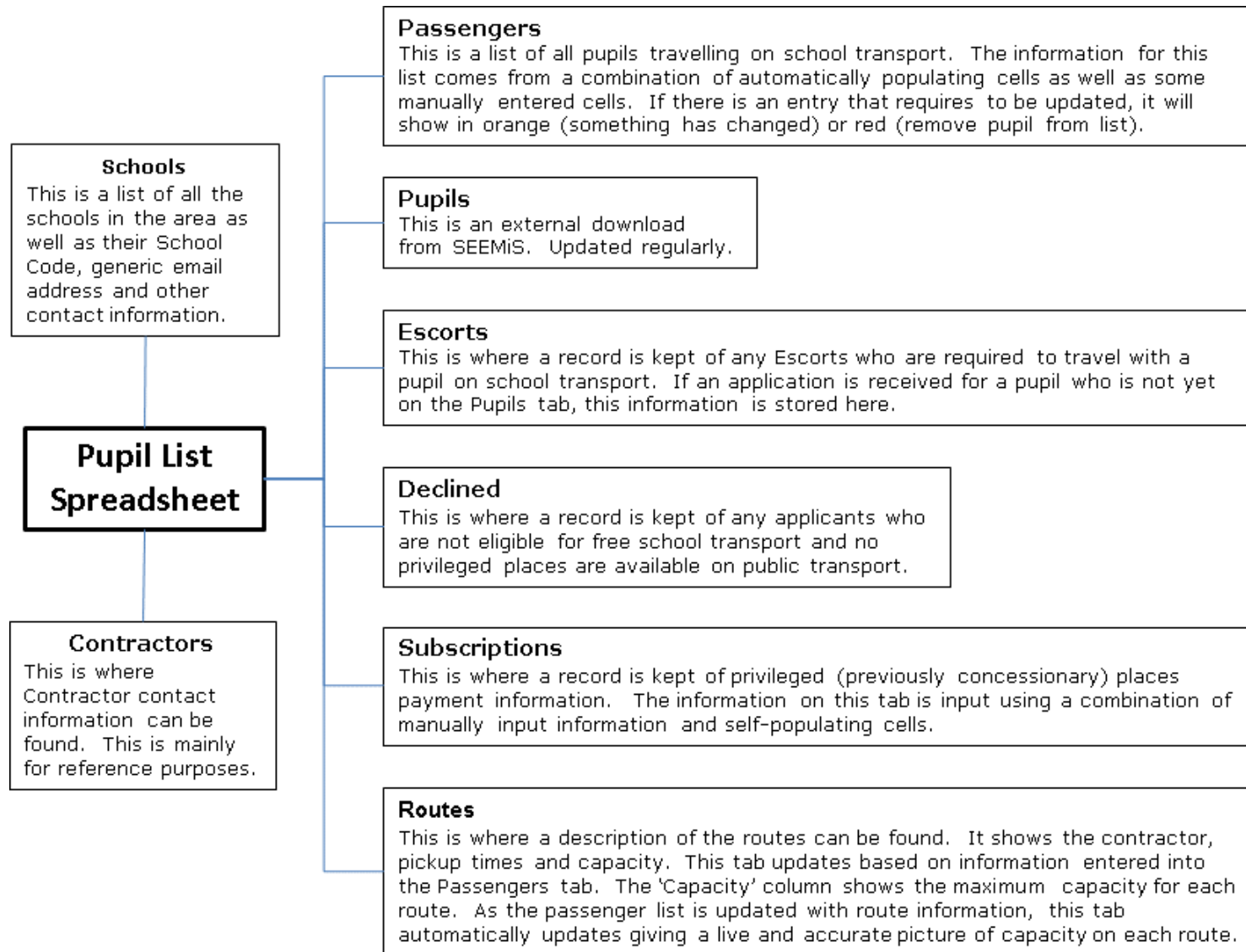
**Figure H: PTU Information Systems**



### Pupils List Spreadsheet – Area Function

7.2.6 The PL spreadsheet is the primary data management system used for managing H2S transport. It comprises several linked worksheets that are used for data input as well as for reporting and querying purposes. A brief description extracted from the documentation is provided below.





- 7.2.7 Once the eligibility checks are completed and a pupil is accepted for school transport, they are added to the **Passengers** tab. The TO or TA manually enters the route that the pupil will be travelling on as well as the pickup location. This is based on the applicant's address. The distance to the school is also entered calculated from Google Maps. Finally, the pupil's eligibility code is entered based on codes determined by the PTU and the area TO's.
- 7.2.8 The pupil is assigned to a **Route** manually by the TO looking at which routes are available in the area that are registered bus services or contracts with spare capacity. For the latter, the TO will contact the contractor to confirm that there is room on the vehicle and issue a revised passenger list. Operator contracts can be varied (either way) by 10% mileage change without any change in the contract cost. A new contract may be required if no existing route is available, or the mileage variation is more than 50%. Alternatively, a parental contract may be offered which pays £0.50 per mile. In some cases, parents provide a feeder route to a bus service, i.e., 2 contracts for the same pupil(s) and there are also feeders with private sector contractors.
- 7.2.9 TOs can use the Dynamic Purchasing System to tender for a new contract which takes a couple of weeks. Most routes remain broadly the same with only minor variations each year.
- 7.2.10 The key route information collected includes:
- Route No.
  - Contractor
  - Description
  - Pick-up/Drop-off location
  - Capacity
  - Nos. of pupils on route
- 7.2.11 Exceeding the capacity is flagged up in the spreadsheet which requires action by the TO, i.e., check with the operator and make any adjustments in the spreadsheet. (For instance, an operator may put on an 8-seat minibus for a 4-pupil route without notifying the TO). There is little monitoring of routes and the TO relies on the contractor to supply any information on route/vehicle changes.
- 7.2.12 Except on public transport contracts, the TO does not schedule the service or determine the order of stops which is left to the operator to decide based on their local knowledge, vehicle size, etc. There are three types of contracts:
- Public service contracts that specify the route and schedule
  - Closed contracts specifically for H2S transport
  - Tendered as closed contracts but registered as public bus services.

For public routes, operators are given the previous year's number of public passengers, plus the estimated number of entitled pupils, to help them plan the capacity requirements for the service. A condition of the contract is that operators must supply sufficient capacity including seasonal variations and reserve seats for pupils as a priority. For closed school contracts, tenderers must also provide timetables as part of the tender. Some public transport operators provide data from the ticket machines which is processed using Ticketer software in-house.

- 7.2.13 The TO can see the location of the pupils and the pick-up/drop-off stops on Google map, colour coded for each school and the routes. The operators liaise with the parents on the time of pick-up/drop-off and the stop location. These are either NapTAN stops or PUDO locations that are safe places as decided by the operator (if there is any doubt then THC road safety staff can do an inspection). Pupils are expected to walk to the nearest stop.
- 7.2.14 Routes are generally based on school catchment areas so apart from public routes there are only a few exceptional routes that serve overlapping catchments, at least for mainstream schools, but there are some for ASN transport contracts. There are also some routes that serve more than one school.
- 7.2.15 The routing and scheduling of services is constrained by the geography of the Highlands and relies to a large extent on the local knowledge of the operators. Nevertheless, it would be beneficial to visualise the routes and schedule on a map. This may show opportunities to combine routes or create routes serving more than one school (this already occurs, for example, where primary and secondary schools are located in the same town).
- 7.2.16 Non-eligible pupils may be able to pay for school transport services which is recorded in the **Subscriptions** tab.
- 7.2.17 The **Escorts** tab stores information on escorts who are provided by schools for ASN pupils. It also records information on pupils not yet stored in SEEMiS. The TOs are expected to include escorts as part of the route planning which can make some ASN routes lengthy and complex.
- 7.2.18 The **Contractors** and **Schools** tabs record information on these features and are linked into other areas of the Pupil List such as the Route and Pupils tabs, respectively.

### **Pupil List – Centralised Function**

- 7.2.19 Each of the three areas operate independently when determining eligibility, specifying routes, allocating pupils to routes and working with operators including issuing contracts/variations to contractors. They liaise with PTU HQ and the other areas regularly but record most operational data locally on their own area Pupil List. The Senior TO in PTU HQ has access to each area's Pupil List.

- 7.2.20 Even so, the Pupil List has some centralised functions that are filtered into the area pupil lists, namely a centralised list of:
- Pupils downloaded from SEEMiS
  - Contractors
  - Schools
  - School Calendars
  - Fares (buses, taxis, ferries, trains)
- 7.2.21 These provide a common set of data that is used across the PTU, filtered as appropriate to each area.

### **Operator Invoices**

- 7.2.22 Each area processes invoices from the operators on a separate spreadsheet which records the following information:
- Route no.
  - School
  - Contractor
  - Integra Reference No.
  - Daily rate – from tender submissions – recorded in accounts
  - Calendar – from central calendar
  - Cost code
- 7.2.23 The invoice data is input manually apart from the daily rate and calendar days which are defined centrally.
- 7.2.24 The information from the invoice is input into Integra and once checked is authorised by the TO for payment in Integra.
- 7.2.25 Integra has limited reporting capabilities, and there are no standard reports in the Pupil List, although the area's accounts sheets have been developed in-house to enable some analysis of data.

## **7.3 ASN pupils**

- 7.3.1 The business process for managing ASN transport follows the same procedures as mainstream pupils and uses the Pupil List spreadsheet where ASN contracts are flagged. The main differences are in the determination of eligibility, which resides with the ASN Area Manager rather than the TO, and in the provision of escorts, who are employed by the Education & Learning Department and arranged by the schools.
- 7.3.2 The PTU acts as a transport broker arranging the most suitable transport to meet the pupil's needs as specified by the ASN Area Manager or school. The travel arrangements are confirmed with these and once agreed the operator

liaises with the parents on the pick-up details. If an escort is required, these are built into the contract. Parental contracts may be offered if no suitable operator is available, or the cost is prohibitive. In some cases, a sibling may be able to provide escort duties.

- 7.3.3 Cost is a significant issue as the TO has no control over the ASN transport costs which comes out of the PTU budget. The policy is to review ASN travel needs annually, mainly to confirm the contract requirements, but some schools are not very cooperative in reassessing ASN pupil travel needs so not always implemented in practice.

## 7.4 In-house fleet

- 7.4.1 There is no interaction between the fleet and PTU in terms of information sharing or use of information systems. [NB we have not covered fleet management systems in this chapter]

- 7.4.2 The fleet costs are re-charged from the PTU budget in Integra.

## 7.5 Other PTU systems

- 7.5.1 All pupils using H2S transport are issued with a **Bus Pass** which is stored on a separate spreadsheet and linked to the Pupil List. The Bus Pass is administered separately in the PTU HQ. The Scottish Government is investigating the use of digital smartcards for bus travel, including H2S transport.
- 7.5.2 Each area has its own list of contractors and keeps compliance records of **vehicle** registration no., insurance, MOT and vehicle type (car, minibus, accessible vehicle, etc.). There is no centralised system for recording vehicle information.
- 7.5.3 **Driver** information is stored centrally and administered by Caro Munro who handles all disclosure checks and keeps records. Drivers are issued with a photo ID card.
- 7.5.4 **Public Transport.** A significant number of pupils travel on contracted local bus services as a condition of contract and are issued with bus passes. There can sometimes be an issue if passengers turn up without having applied for transport and are therefore unknown to the operator and the PTU and there are instances where operators have failed to charge a fare to non-entitled pupils, leading to the impression that they have an entitlement to travel. This introduction of the Young Persons free travel scheme has significant implications for this sort of capacity management issue in future. In addition, a small number of entitled pupils travel on commercial bus services, with passes being bought by the PTU. The Pupil List records pupils on public buses, DRT and CT services in the same way as on closed contracts. The introduction of

the free bus travel scheme for everyone under 22 will reduce the need for specific school travel passes.

### **Corporate THC Systems**

- 7.5.5 **Maproom** GIS and the **One Scotland Gazetteer** are administered by THC ICT Services. **Google Maps is accessed via the internet.** These are linked to the Pupil List to support eligibility checks for school transport and in determining the route to place a student on.
- 7.5.6 **SEEMiS** is the Education & Learning Dept. education management system used to record information on pupils, schools, performance, etc. Pupil data is exported to the central Pupil List in the PTU. TOs have no access to SEEMiS to update or edit pupil data. Any errors and omissions are sent separately to the schools for them to update SEEMiS.
- 7.5.7 Next Generation (SEEMiS) is still in development and there is an opportunity for the PTU to engage with the Education Dept. to specify the reports they would like as well as other capabilities the PTU such as the data transfer process via the Integrator function mentioned above. From a meeting with the specialist staff in THC, the following steps are suggested as part of the engagement with the PTU:
1. Document the existing reports provided from SEEMiS to the Pupil List together with the access arrangements
  2. Specify on-going/future requirements and once agreed implement these via the Integrator process if appropriate (this could replace the current download procedure, e.g., custom dashboard of reports)
  3. Monitor the process, review and amend as needed (e.g., interface to a new PTU transport management system)
  4. Determine future privileged access to principal staff in PTU
  5. Confirm access arrangements with senior management

Despite the new software the process of data management will remain with the schools who will be responsible for keeping pupil data current.

- 7.5.8 **Integra** is THC corporate financial management system. PTU uses Integra for processing operator invoices and query using standard reports on budgets and costs. The standard reports in Integra are not very helpful to the PTU and there is no capability to produce custom reports or make queries. There is a requirement to pull together information in Integra and the accounting spreadsheets to provide a more robust data management and reporting system.
- 7.5.9 Other external services are accessed via the internet such as Traveline Scotland.

## 7.6 Key requirements

7.6.1 There are key requirements where the Pupil List is deficient or does not provide any functionality which should be included in any future system:

- More integrated mapping and visual tools for the eligibility checks, planning routes and schedules. Route maps showing pupil address, pick-up points, schools and escort locations.
- Functionality to plan routes and schedules including route optimisation, create passenger manifests and transfer this to operators electronically. Ability to switch pupils between routes using on-screen map tools with automatic update of all related pupil and route contract files.
- More robust and integrated system for contract management including operators, vehicles & equipment and drivers, to allow TOs more time to check and monitor service delivery, review safeguarding and ensure that other THC policies are being followed.
- Comprehensive reporting capabilities to include standard reports as well as the ability to produce custom reports through a user-friendly reporting tool.
- Centralised database management system for all data and processes used in the PTU business.

7.6.2 The PTU has reviewed the Statement of Requirements for a Passenger Transport Management System (PTMS) prepared by Aberdeenshire Council with a view to tendering for a similar system for THC.

## 7.7 Business Improvement

7.7.1 Deploying a new Passenger Transport Management System should bring about a number of benefits for the PTU including:

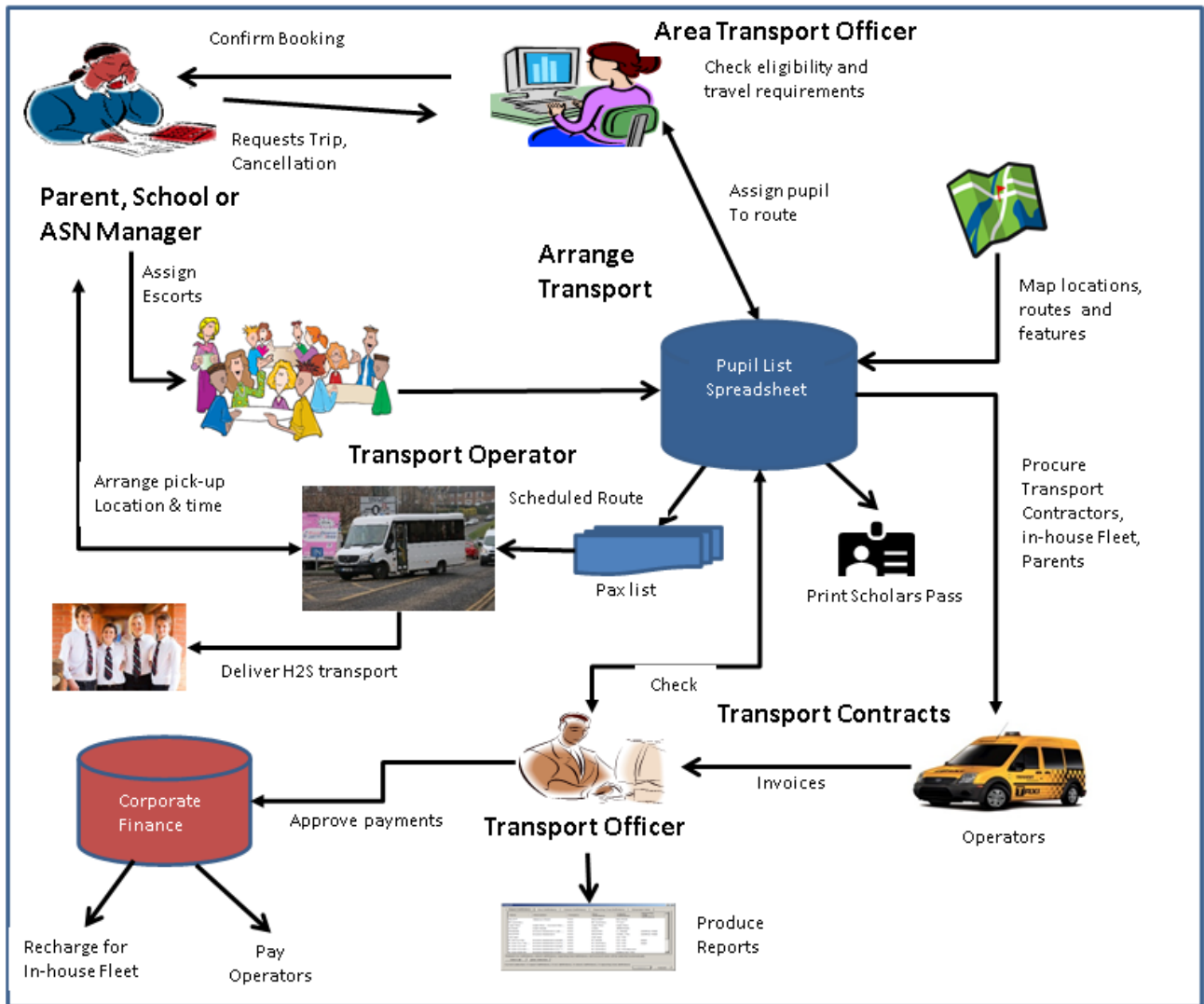
- More integrated system for managing the end-to-end business process:
  - ◆ Streamlined procedures for booking and scheduling trips
  - ◆ User-friendly interface and tools for data management
- Easier access to information and enhanced reporting capabilities
  - ◆ Better management information to measure performance
  - ◆ Improve efficiency of transport contract management
- Optimise route planning and schedules
  - ◆ Flexibility to explore different options
  - ◆ Reduce costs

7.7.2 At present the PTU area TOs act as transport brokers between the parents/schools/ASN managers who submit the transport applications and the operators who deliver the service. The business process focuses on making the arrangements with limited control over the demand or how the supply is delivered. In effect, the PTU is having to deliver transport decided by others from its own budget and with inadequate management tools.

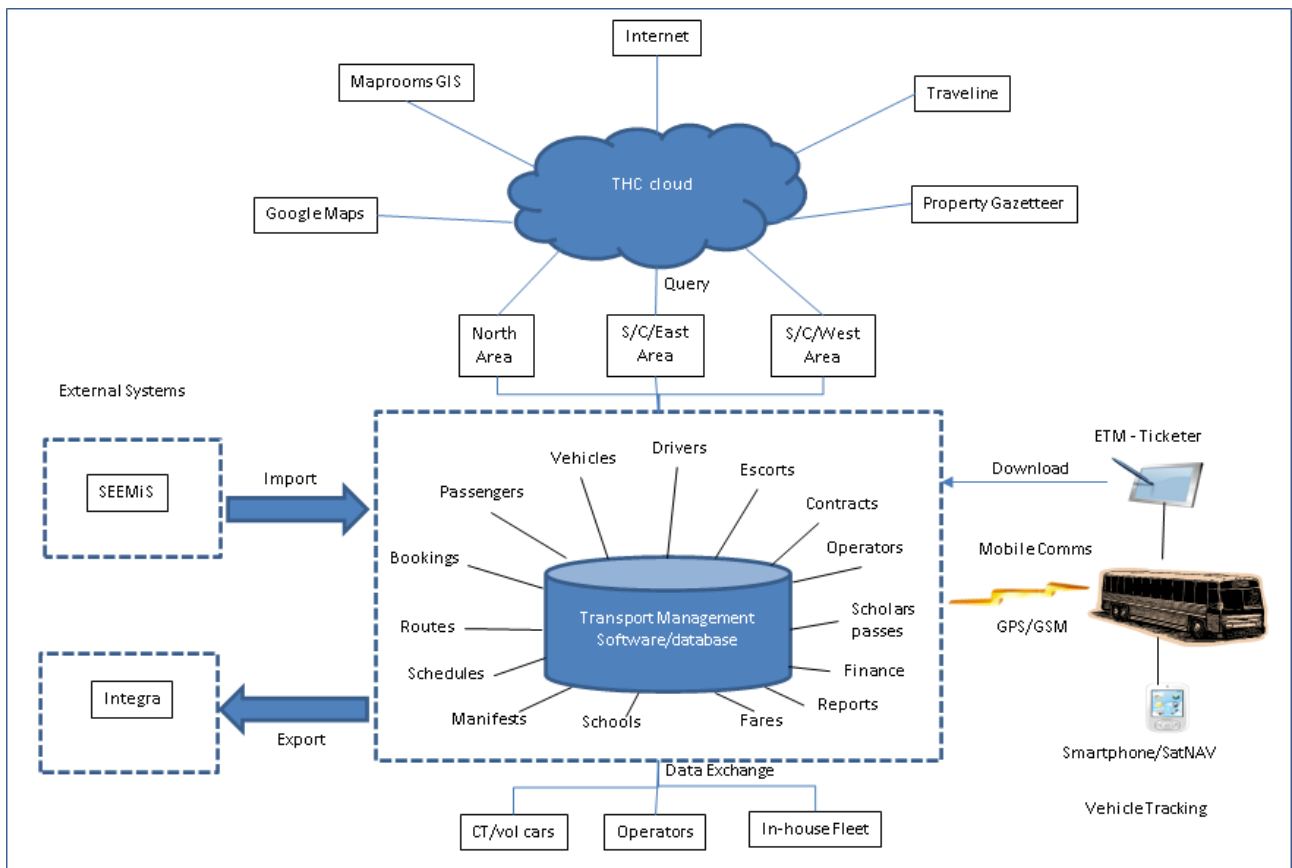
- 7.7.3 The PTMS would enable the PTU to improve its business by access to better quality information, more streamlined and automated procedures, together with the ability to optimise routes and schedules in a more flexible manner rather than relying on the operator to determine these (the goal is to improve the efficiency and effectiveness of the H2S transport working collaboratively with parents, schools and operators to ensure best value-for-money while delivering a quality service).
- 7.7.4 The PTMS does not guarantee this but provides enhanced tools and technology to at least provide the opportunity for business improvement. The Business Process diagrams in Figures G and H below outline the current concept of operations and the to-be system architecture for a more integrated PTMS.
- 7.7.5 The most significant change is in the arrangements for organising routes and schedules that should be performed by the TOs rather than the operators. This does not rule out collaboration with operators where appropriate, but the emphasis should switch to the PTU being in control of the service planning and management with the operators responsible for the delivery of the service. The three operating areas can continue but they should access the same centralised database and software platform as depicted in to to-be systems architecture. This will eliminate data duplication and redundancy and ensure that procedures follow standard practice with more capability to measure performance as a means of enhancing service delivery, improving efficiency and identifying areas for cost savings. In short, a robust PTMS will give the PTU more control over the business process and enable many improvements which will be transparent internally as well to commissioning customers in other departments, the council and the wider public.
- 7.7.6 The two figures below provide general context the content of the chapter and the process is facilitated by use of following THC documents:
- Mailmerge Letter to Parent – Entitled
  - Mailmerge Letter to Parent – Declined
  - Application for School Transport 2014
  - ASN Home School Transport Application Form 2014
  - Variation to Contract Form
- 7.7.7 These latter items have been omitted for reasons of space.



**Figure I: PTU Concept of Operations**



**Figure J: PTU Data Management – To Be Systems Architecture**



## 8.1 Introduction

- 8.1.1 This chapter is structured using the TAS Review Cycle approach as outlined in Figure A in Chapter 1.

## 8.2 Conclusions

### Policies

- 8.2.1 THC's School Transport policies meet the Council's statutory duties and government guidance and are not more generous than those of other Scottish authorities.
- 8.2.2 Where discretion to provide transport exists, the policies set out how discretion is limited and the processes to do this are generally effective and in line with best practice.
- 8.2.3 The approach adopted by THC towards transport to Gaelic Medium Education is logical and consistent with guidance; this is not an area that THC could consider discretionary.
- 8.2.4 Provision of transport support to a school chosen by a parent on denominational grounds is discretionary. Another area where THC differs from some other authorities is that transport can be provided to more than one home address where parents are living apart. Our understanding is that these two matters have been explicitly considered by THC in the past and the current policy endorsed. The volume of denominational transport is minimal as there are only three denominational schools in Highland.
- 8.2.5 Despite the statement in the Policy that "*Transport is not provided to nurseries or pre-school education*" THC does in fact provide some ASN nursery transport. We assume this is under 'exceptional circumstances' discretion but the criteria under which this is provided are not published which is a failing that could lead to a maladministration complaint.
- 8.2.6 As a matter of formality, we note that THC has not produced an Annual Seat Belt Statement as required.
- 8.2.7 There is no environmental component to the School Transport policy. This implicitly influences THC staff to focus on cost-saving at the expense of environmental impact.

## Eligibility

- 8.2.8 The bulk of transport eligibility determinations requires a) identifying available (i.e. safe) walking routes and b) measuring the distances involved. THC has good practice processes in place for both these functions.
- 8.2.9 Transport is only provided where there is a specific application by the parent. However, to reduce administration costs there is no requirement for reapplication unless circumstances have changed, or ahead of the transition from primary to secondary school. This can potentially lead to over provision of capacity where an entitled pupil uses another mode to travel to school. The absence of electronic records that show whether pupils actually used some transport options (e.g. school buses) compounds this problem.
- 8.2.10 Whilst the application process has mainly moved on-line it still includes a manual option (which requires different information). Schools are involved in the process which can give rise to delays before information is passed on. A full-scale move to electronic applications and communications with parents would streamline the process.
- 8.2.11 The Transport Unit manages school transport on the basis of three geographical areas which, whilst good for local liaison and knowledge, can give rise to inconsistency. The introduction of centralised transport management software aligned to streamlined business processes should eliminate this problem.
- 8.2.12 Discretionary eligibility decisions, particularly for ASN transport, are shared between the Transport Unit and Education. There are no means for Transport Officers to assess how robust these decisions are, which raises some perceptions that the provision is over-generous.
- 8.2.13 There is no consistent approach to reviewing, ideally annually, discretionary eligibility decisions – for example to assess whether a pupil provided with dedicated transport on ASN grounds has now acquired the necessary functional skills that would mean that they were suitable for Independent Travel Training.

## Travel Options

- 8.2.14 THC faces significant challenges due to its geography. This applies both to the demand for transport (very lengthy journeys which cannot be combined due to the resulting excessive travel time) and the supply of transport (areas where there is a shortage of providers). The Transport Unit does make effective use of both in-house provision of vehicles and drivers and of community transport services where the commercial offer is either unavailable or unacceptable from a cost viewpoint. It also seeks to optimise the use of public transport i.e. primarily registered local bus services wherever possible.

- 8.2.15 However, the legislation setting out school transport duties on authorities makes it clear that they can make “*such arrangements as they consider necessary for the provision of*”
- Transport
  - Bicycles or other suitable means of transport, to the pupils or to the parents
  - Payment of reasonable travel expenses.

8.2.16 Specifically, THC does not provide for either:

- Independent Travel Training – equipping pupils with ASN with the skills required to travel independently
- Cycling

This is poor practice from the point of view of pupil health and wellbeing and the environment. In addition, it contains the potential to save the authority’s costs over time.

8.2.17 In addition, our assessment is that the current THC travel expenses scheme is not flexible enough to attract parents, particular those with ASN pupils who may be travelling short distances, to provide the transport themselves. Note that whilst potentially offering significant savings to the authority, this may increase vehicle movements to particular schools and therefore produce a worse environmental outcome. But as there is no current requirement to consider the environment and more specifically no guidance on how to value environmental impacts when considering the options and costs, that concern had not been the reason for not pursuing this option.

8.2.18 THC already provides for ferry travel where logistics requires it but it does not take advantage of the discretion within the legislation to provide other, less conventional, forms of transport or approaches, such as providing a powered wheelchair as an option for a disabled child within walking distance.

### Planning

8.2.19 The Transport Unit currently uses an Excel spreadsheet system, linked to external web-based mapping and corporate GIS, as its primary means of planning the school transport arrangements and maintain records. Whilst we should record that the system in place is the most sophisticated development of an Excel approach (which was the common model for most authorities) that we have ever encountered in work with over 50 other UK education authorities, the fact is that this approach is no longer fit for purpose.

8.2.20 This is primarily because although it helps decision-making and maintains basic records of transport arrangements, contractors, routes and costs:

- The record-keeping arrangements are limited – particularly around recording decision-making (who, when, why, etc)
- The reporting arrangements are even more limited and there is a risk that this results in the Transport Unit being unable to demonstrate its cost-effectiveness
- Data exchange arrangements are limited with Education and schools and with external public transport information systems (e.g. where THC commissions a school bus that is open to the public)
- The distributed nature of the management arrangements, with each of the three Transport Unit areas operating its own spreadsheet (Excel is not designed as a database for multiple concurrent use) gives rise to slight variations in approach e.g. different shortcut coding which then adds to the difficulty in providing consistent authority-wide information.
- The current arrangement makes it difficult to assess the likely costs of different options. In addition it contains no measures of the environmental impact of different options.

8.2.21 In addition, there is no automated route optimisation function. We stress that in our experience this is less important than record-keeping and reporting. The complexities of ASN transport provision, in particular, require human judgement. The current approach uses three staff with local knowledge of the road system in their patch, personal relationships with the school and the operators in their area, some knowledge of the pupils involved and experience of previous journey times to help come to effective logistical decisions. However, these arrangements:

- Are vulnerable to staff change
- Do not allow staff to easily test a series of alternative routes or transport options to confirm the most cost-effective option
- Are time intensive.

We have not undertaken a sample schedule to assess the efficiency of the current route network as this was outside our brief. But equally we have not observed anything that suggests any such inefficiency.

8.2.22 There is an overlap between the two Transport Unit functions – provision of cost-effective school transport and commissioning an effective public transport network that meets local needs. It should be recognised that pupils and students not entitled to free school transport or travel should be considered members of the public and they may have a need for public transport to access education. Whilst THC does currently have a 'privilege lift' system in place to make spare capacity available to such students, the question arises whether this should be a deliberate policy. A recent instance of reducing such

capacity led to parental and member complaints. It would assist the planning process and staff involved if there were some corporate guidance as to the appropriate balance to be struck.

- 8.2.23 This issue is being brought into sharp focus by the Scottish government's introduction of free bus travel for Under 22's. This raises a number of complex issues and at this moment there is no indication that Transport Scotland will reimburse authorities and operators that respond to the predicted increase in demand (other than the reimbursement to operators based on single fares foregone), particularly for journeys within the statutory 2 and 3 mile walking distances.

### Procurement

- 8.2.24 Highland Council participates in a joint procurement strategy along with Aberdeenshire Council and Aberdeen City Council. THC has operated for a Dynamic Purchasing System (DPS) model since 2020 to replace a non-electronic framework. Using a DPS model constitutes good practice in a constrained market as it allows new operators immediate access to opportunities once they qualify through the validation and quality processes. It is also flexible enough to allow for differentiation into separate lots reflecting e.g. different vehicle sizes or service types required and different approaches to mini-competition and award can be pursued, including a greater or lesser emphasis on quality or price.
- 8.2.25 Suppliers must accept the THC Conditions of Contract. Whilst this is in essence fit for purpose as it stands, TAS has provided detailed commentary on this document and identified a number of improvements, including:
- Updating to reflect post-Brexit legislation and guidance
  - Handling of TUPE
  - The approach to annual price adjustment
  - Adjusting the defined Lots
  - A very unspecific and unenforceable reference to environmental impact
  - A requirement for operators to comply with the official guidance on maintaining vehicle roadworthiness
  - Updating and enhancing references to child safety requirements
  - Updated section on Protection of Vulnerable Groups requirements
  - Additional sections dealing with safeguarding training and whistleblowing
- 8.2.26 Issues raised include:

- Whether some of the more detailed quality aspects and monitoring arrangements (which are unusual for contracts of this kind) are needed or applied consistently e.g. a complex 'Rectification Plan' process
- The need for a consolidated and streamlined performance management process which aligns the documentation with what can actually be delivered in practice
- The need for a plain English version of some sections – notably data protection/confidentiality and transport risk assessments – which gives smaller operators clear instructions as to what they must or most not do
- Identification of subcontractors. There is currently a clause excluding subcontracting without formal THC approval. This clause is not being enforced where private hire car operators bid on the basis that they are acting as agents for independent self-employed drivers signed up to their booking system, despite the fact that the Conditions explicitly require it in these circumstances. In some cases, THC can identify whether self-employed drivers are involved from the VAT status of invoices. Where drivers are employees of the contractor then the turnover will be above the VAT threshold and a VAT invoice will be issued. Where the contractor is acting as an agent for self-employed drivers, their individual turnover will be under the VAT threshold so the invoice will not include VAT.
- THC is a 'living wage' employer since December 2019. The Conditions of Contract require contractors to offer 'Community Benefits' including "A commitment to fair working practices including the "Real" Living Wage". However, in practice there is no evidence that the Council actually enforces this requirement and some suggestion that a number of the 'self-employed' drivers currently providing school transport services are reimbursed below living wage.
- The status of self-employed drivers – recent court/tribunal cases, most notably connected with Uber and Addison Lee taxi/private hire services, have determined that self-employed drivers who are subject to a level of control by the company they work for, do in fact qualify as 'workers' (rather than employees) and are therefore entitled to minimum wage, holiday pay and certain other benefits. Employment law is not a devolved matter so the rulings do apply in Scotland. If this works through then it may well affect the contract prices paid by the Council.
- Whilst THC does not have a direct role in enforcing tax rules it has an indirect one and would be expected to assist HMRC in investigations. HMRC has recently announced some new requirements for declarations by taxi and private hire licence holders.
- Clarification and confirmation of valid insurance cover for the service where sub-contractors are involved.



- 8.2.27 THC faces a significant struggle to ensure that the market offers adequate competition. Its position is in extreme contrast to urban or suburban authorities which can expect significant cross-border competition and a much larger supply market supported by lower car ownership and more frequent use of bus, taxi and private hire services.
- 8.2.28 The relatively recent but very significant shortage of drivers in the PSV, taxi and private hire sector is bound to impact on the Council's ability to attract competition and in some cases any bids at all for school transport work. Many drivers have taken the opportunity created by COVID-19 to redeploy to the light van and HGV distribution markets which offer better pay and/or conditions. It seems likely that an increase in passenger transport driver pay rates will be the primary response to this shortage and, given that staff costs make up more than 60% of the costs of transport operation, this will certainly have an impact on school transport costs faced by local authorities.
- 8.2.29 Strategies that the Council can adopt to ensuring competition and controlling costs include:
- Regular engagement with the supply market and the offer of practical support to potential tenderers (e.g. help in registering for the DPS). This engagement was suspended during COVID-19 – it should be restarted.
  - Direct provision of some features that may be problematic for smaller operators to provide themselves. An example would be driver training; if the Council organises this directly it would also give it much more control over the content and delivery process, which we consider necessary (see Operations)
  - Use of in-house provision, particular in respect of the more specialist requirements for accessible minibuses serving children with significant care needs. It is more difficult for external operators to offset their investment in such vehicles and staff by a range of other work in addition to their school transport contract. Consequently, THC will pay for most, if not all, the overheads costs for such operators. THC already uses in-house provision. However, in the long-term the enhanced conditions of employment associated with working for the Council does mean that although THC direct provision should definitely be considered as a tactical solution (which it currently is) within a portfolio of options and can be expanded as opportunities arise, it cannot be considered as a large-scale strategic solution to the cost problem. Reflecting this, the current trend across local authorities is to outsource passenger transport provision. There are also practical constraints for THC to scale up its fleet because of the dispersed nature of the requirement. We have observed a variety of partnering models in operation by THC (e.g. with schools) and pragmatic use of caretakers as drivers and we consider this good practice and evidence of a flexible approach.

- Use of community transport (CT) operators to provide home to school transport. Again, the Transport Unit is well aware of this pathway and the approaches taken have been more innovative and integrated than at any other authority we have observed. This is not, however a universal or easily scalable solution given the community-based nature of these groups and the requirement of volunteers for much of the driving (even if the school transport is provided by paid drivers) as well as to take on the trustee roles. There will be further opportunities to extend the use of package commissioning (i.e. a joint commission of school transport and community transport) but these solutions do take up above average officer time. We have provided a detailed commentary and guidance around the issue of CTs undertaking school transport, covering constitutional, tax, charitable status, competition law, subsidy control and operator/driver licensing.
- Greater use of vehicles and drivers operating under the '24 hour exemption' from private hire licensing where the car is hired exclusively for the Council. THC already makes use of this exemption.
- More provision by parents – particularly under revised reimbursement arrangements. THC could also facilitate parents to share transport arrangements for entitled children between themselves to make the offer more attractive, reduce the individual burden and the environmental impact. This would require a specific initiative.
- Operation-only contracts where the Council supplies the vehicle – particularly where there is a shortage of good quality accessible vehicles. This model is occasionally used for larger vehicles by other authorities. It would be worth exploring whether such a model could attract new entrants into the market, particularly exploring opportunities for people to undertake dual caring and driving roles.
- Operator provision of Passenger Assistants as part of their contract. This cuts down administration and dead-time/mileage associated with picking up and returning council-provided PAs. This approach is frequently deployed by other authorities. The THC approach whereby PA provision is primarily a school function, excluding the need for the Transport Unit to intervene, is relatively unusual, although to the extent that schools utilise existing education support staff to create the PA capacity it may well be cost effective. The costs associated with this are not part of the Transport budget.

8.2.30 There may be a longer term role for THC to stimulate and support new entrants into the driving profession and potentially into the private hire or PSV market. Given the growing driver shortage, an apprenticeship scheme could help create a new supply. It could also receive external financial support associated with upskilling the workforce. If linked to the community transport sector it would ensure that trainees worked with more vulnerable passengers developing habits that would usefully transfer to mainstream passenger

transport. The achievement of accredited driver qualifications could be staged to ensure a useful work contribution before the trainees move on.

- 8.2.31 We do not consider that more radical competition models such as reverse auctions or creating a call-off option at a mileage rate set in advance by THC would be useful in the longer term, particularly as such approaches do nothing to stimulate new market entrants. The same applies to general outsourcing of school transport arrangements to procurement specialists who would face exactly the same problems of supply as THC Transport Unit does, but without the ability to integrate school, public and community transport.

### Operations

- 8.2.32 We examined the in-house THC operations in some detail. In general, the arrangements do pursue flexible ways of keeping costs down and are fit for purpose. The operation is relatively small scale with one supervisor, 10 drivers and 14 vehicles (additional driving capacity is provided by two schools). Arrangements include staff training that meets good standards and contributes to Continuous Professional Development. Comparison of annual pupil trip costs between in-house and commercial operators supports the view that the current fleet operations offer good value.
- 8.2.33 Relations with external operators are felt generally to be good and this view is buttressed by the results of a relatively recent survey of external contractors which examined a number of aspects of the commissioning relationship.
- 8.2.34 Operational issues identified during the work included:
- The impact of the (PSVAR) Public Service Vehicle Accessibility Regulations on the availability of buses for school contracts. These regulations require full wheelchair access to all local bus services on vehicles with 23 or more passenger capacity and the deadline for this has passed. It had been assumed that dedicated school buses not available to the public were exempt, but any charging for transport that takes place brings the vehicle within the PSVAR remit. This means that privilege lift places can only be offered on PSVAR compliant vehicles or else without charge. There aren't enough PSVAR vehicles available for school bus work. At present, the DfT has provided temporary exemptions, but it is unclear how long this grace period will last.
  - Parental, pupil and school expectations on reliability and punctuality are mostly realistic, reflecting the reality of weather and road conditions in Highland.
  - Emergencies are uncommon.

## Monitoring

- 8.2.35 THC lacks a consistent operational service quality and safety monitoring function. Most current service monitoring is reactive. Such an approach risks identifying safety failings after something has gone wrong, not before. The safety audits we undertook support this concern.
- 8.2.36 There is no active research into customer satisfaction – the assumption is that if there are problems then pupils, parents, carers, schools or operators will react and where relevant this might be registered as a complaint. However, this approach does not allow for service users and other stakeholders to identify their priorities for service improvements.
- 8.2.37 There are limited metrics in place for objective monitoring of operator performance – although there are performance requirements in the contract conditions these are confusing and in some cases appear contradictory. It is true that, as might be expected, COVID-19 had a significant impact on on-site monitoring. But THC’s approach to monitoring does not appear to have been extensive or proactive before then. Our understanding is that in general only occasional spot checks took place, with much reliance on schools to monitor on site and mostly responding to issues through dialogue between Transport Officers and operators. The geography of Highland supports this distributed approach to service monitoring and no major issues have been identified or reported. The generally acceptable performance of operators means that it has not been necessary to apply penalties or sanctions very frequently and there is also a concern not to alienate operators given the fragile state of the market, but as with customer satisfaction this undermines the potential for continuous improvement. Given the low sample size for spot checks, this cannot be taken to signify that issues have not occurred and gone unreported.
- 8.2.38 Note that we are not suggesting a lack of standards – these are set out in the contracts with operators and although we have suggested a number of improvements, they are in general fit for purpose.
- 8.2.39 We undertook site visits at four schools to observe school transport arrivals and departures, with a particular focus on passenger safety. Full audit reports with photographic evidence have been provided to the Transport Unit. Mainstream school transport did not reveal any problems. However, the arrangements at ASN schools revealed significant failures in the use of wheelchair tie downs and passenger restraint systems, as well as the use of modified vehicles which have not obviously been tested for compliance with safety standards. This confirms to us that:
- There isn’t an adequate vehicle and equipment testing regime – we think that one or more of these vehicles may have been tested as a taxi or private hire vehicle but without the wheelchair access features being subject to test

- Regardless of the requirement in the contract for the contractor to ensure that staff have been trained in the use of safety equipment, the staff who were driving on the days of our safety audit had not been adequately trained in the appropriate use of equipment. In some cases very basic errors were made which significantly increased the likelihood of passenger injuries in the case of an accident.

Whilst our inspections remain a 'snapshot' of a particular two days, it was clear from conversations with the drivers that the irregularities reflect long-standing habits and practices and so the risks to which pupils have been exposed has likely occurred each time they have travelled. These inspections highlight a small percentage of the operators involved and it is of course arguable how far they can be considered representative.

8.2.40 Other issues identified and discussed include:

- Improvements to the current general operational standards and the shortage of newer and greener vehicles in the market.
- Training curriculum for drivers and PAs. The conditions of contract state "*The Authority may specify training needs for escorts and drivers on Contract Routes transporting children with additional support needs*" but there is no consistent, universal and comprehensive requirement in place. In particular there is a gap regarding active safeguarding training for drivers who will come into contact with potentially vulnerable young people and who are therefore in a position to notice any signs of abuse. The Scottish Public Services Ombudsman has criticised Angus Council for failure to provide such protection training for its drivers.
- Traffic management and safety issues at school sites – particularly to ensure that there is a clear and shared understanding as to where responsibilities lie between the Council, the school and the operators
- A more consistent approach to the use of photo ID for drivers and PAs

8.2.41 Our assessment is that there is inadequate staffing capacity within the Transport Unit to support the necessary contract performance and safety monitoring programme which on the one hand is justified by the level of spend and on the other is required by the results of the sample safety audits undertaken.

### Reporting & Review

8.2.42 The current reporting and review arrangements do not appear to us to be systematic enough, given that the total budget value involved exceeds £10m. There are two issues that stand out:

- The lack of any transport management software to support the provision of management information

- The absence of a working Service Level Agreement between Education and the Transport Unit.

8.2.43 For management information, the current use of a series of linked worksheets within an overall Excel spreadsheet, divided across three transport areas, makes consistent and, where necessary, bespoke reporting challenging. There are limits to automating this process through macros. The result constrains the frequency of effective review and also makes information more difficult for the Education client to access.

8.2.44 Deploying a new Passenger Transport Management System should bring about a number of benefits for the PTU including:

- More integrated system for managing the end-to-end business process:
  - ◆ Streamlined procedures for booking and scheduling trips
  - ◆ User-friendly interface and tools for data management
- Easier access to information and enhanced reporting capabilities
  - ◆ Better management information to measure performance
  - ◆ Improve efficiency of transport contract management
- Optimise route planning and schedules
  - ◆ Flexibility to explore different options
  - ◆ Reduce costs

8.2.45 The lack of a working SLA is important, because, as shown in the next section, our view is that the school transport budget requires joint management. An SLA sets out how this will be done. The draft SLA in its current state is missing a number of key components. It should spell out:

- The baseline activity volumes, suitably disaggregated
- Standards and response times by both parties [some of this is present]
- The frequency of SLA monitoring meetings
- The standing agenda for monitoring meetings
- The Key Performance Indicators
- The Management Information to be presented to the SLA monitoring group, including volumes and costs (absolute and unit)
- Resolution procedures in case of disagreement

8.2.46 We are not aware that any consistent environmental impact data is captured and reported on in respect of school transport.

## 8.3 Recommendations

### Policies

8.3.1 We recommend improving the policy in the following areas:

- It should be renamed as a Travel Support policy with additional information about alternative travel arrangements that can meet the Council's duties, including Independent Travel Training, Cycling and parental or student travel budgets.
- It should include a statement about environmental sustainability objectives related to school travel, including for both entitled and non-entitled children e.g. walking buses and Bikeability and a link to School Travel Plans.
- It should contain expanded references to the specific standards that pupils and parents can expect from the transport or travel support provided, the codes of conduct for both transport providers and parents and risk assessment processes in place including at school sites.
- The statement that "*it is expected that children aged 12 or over will be able to walk unaccompanied...*" runs the risk that the Council will come under pressure to make some form of provision in cases below that age even if not required. The Council is not under a duty to express a view on what age a child can walk a route unaccompanied – that is a parental decision. This might be better converted into internal guidance, but ultimately a case by case decision is required.
- The separate policy on transport to GME (Gaelic Medium Education) should be incorporated in the main policy.
- The appeals process section should be reinforced with more detail about the staging and to include escalation to external agencies. We recommend reviewing whether member involvement is required, as well as the process of providing legal advice to panel members to ensure that they only consider specific relevant circumstances.
- The Policy would benefit from improved layout and presentation values to make it easier to read. It should be clear whether either a Gaelic or an 'easy-read' version is available.
- The summary of the policy on the THC website, whilst admirably brief, needs to be expanded slightly to avoid raising expectations that transport would be provided automatically to pupils with ASN.

## Eligibility

8.3.2 We recommend that THC should:

- consider whether all applications for travel support should be electronic
- review the role of schools in the application and eligibility process, given the move to electronic application.
- commission suitable transport management software that would support the above as well as possible gaps in its geographical management of school transport. [This recommendation is repeated with reference to other points below.]
- review means of obtaining electronic confirmation that individual pupils have made use of THC provided transport
- establish a formal process for discretionary decisions that provides records of the basis for decisions and an agreed review date.

## Transport Options

8.3.3 We recommend that THC should:

- Examine the feasibility and business case for establishing an Independent Travel Training function, making use of the considerable literature and experience that exists across GB.
- Establish a programme that promotes and offers the use of bicycles, accompanied by suitable safety protection and Bikeability training. For appropriate pupils this should include the provision of e-bikes. This should be linked to the development of a safe cycling route assessment system. This should be targeted at 'entitled' children as a means of reducing the Council's costs. In principle it could extend to 'non-entitled' children in order to reduce the scale of the 'school run', but that would require a separate business case and funding stream.
- Review the current travel cost reimbursement system with a view to making it financially more attractive and to reflect the fact that it is more cost-effective for the authority to reimburse the parent to act as a PA (passenger assistant) than it is for the school or for a contractor to employ a PA.
- Establish a community transport support strategy that has the objective of developing the sector's capacity whilst ensuring that the Council benefits by creating additional options to meet its statutory transport responsibilities whilst generating added community benefit.

## Planning

8.3.4 We recommend that THC should:



- Commission integrated transport management software to replace the existing Excel model and to significantly increase the system’s functionality and reporting capacity
- Use the challenge created by the introduction of free transport for Under 22’s to review its policy and practices in respect of service provision for non-entitled pupils and students so that the Transport Unit has guidance, metrics and targets to assist decision-making in this area. This may involve reducing commissioned spare capacity where not needed by entitled pupils – THC should ensure appropriate publicity of service withdrawal to minimise negative feedback.

### Procurement

8.3.5 Much of what THC does already meets good practice (e.g. use of DPS, engagement with community transport, tactical use of in-house provision). We recommend that THC should:

- Revise the Conditions of Contract and associated Appendices to achieve the improvements identified
- Review the approach to self-employed / sub-contracted drivers to ensure that the necessary controls and assurances are in place (especially insurance) and there is clear guidance as to the treatment of self-employed drivers within the procurement process
- Consider whether and how to enforce or promote “real living wage” employment within school contracts
- Streamline the performance management process so that it matches what is practically required and which the Transport Unit has the capacity to deliver
- Reinstate a programme of supply market engagement and research with associated publicity of forthcoming and longer term opportunities
- Explore ways in which the Council can directly offer a consistent and comprehensive training package for operator frontline staff delivering school transport, particularly for pupils with ASN.
- Examine the potential for groups of parents to share transport provision for entitled children.
- Examine the feasibility of a driving training scheme to introduce new drivers into the larger vehicle passenger transport

### Operations

8.3.6 We recommend that THC should:

- Set out the safety and operational standards for the in-house fleet operation in a reference document that is publicly available for transparency.
- Introduce a more systematic approach to operators and new drivers introducing themselves to pupils and their families before they start to provide the service.
- Develop a system to formalise the operator responsibility to assess and confirm suitability of agreed pick up and drop off locations
- Provide schools with transport site risk assessment tools and guidance to meet their responsibilities as site owners, reflecting the fact that contractors may need to wait in a particular location and to drop off/pick up at a particular time and location which may be on the public highway rather than the school premises, so there needs to be agreement as to the relevant safety responsibilities between the school, the Council and the operator.

### Monitoring

8.3.7 We recommend that THC should:

- Develop a proactive contract monitoring schedule designed to ensure that during the cycle:
  - ◆ All major schools receive at least one visit
  - ◆ More frequent visits are planned to ASN schools
  - ◆ There is equitable coverage of operators
- Identify appropriate resources to make suitably trained staff available
- Develop a proposal for discussion with operators whereby THC would commission and control a training programme that would be mandatory for frontline staff involved in school transport

### Reporting & Review

8.3.8 We recommend that THC should:

- Complete the specifications, procure and commission a Passenger Transport Management System (PTMS) as soon as possible
- Draw up a more focussed Service Level Agreement between Education and Transport Unit that provides the basis for consistent performance and cost management
- Ensure that the PTMS and the SLA incorporate adequate environmental impact metrics to enable informed decisions to be made

- Develop a rolling schedule covering at least a year for SLA monitoring meetings and standard management information provision

### Budget Creation

8.3.9 We recommend that THC should:

- Create the framework for a build-up budget that identifies the principal factors behind cost changes and gives the basis for more accurate forecasts of outturns. This should inform the suite of metrics within the SLA.
- Draw up an Implementation Plan that prioritises actions and an associated reporting framework from within a 'long list' of cost-saving activities identified within this review.