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31 July 2009

Public Consultation on the Travel Behaviour Code Statutory Guidance

The Administrative Justice and Tribunals Council (AJTC) and its Welsh Committee have considered this consultation and have asked me to pass on their comments.

The AJTC is an advisory Non Departmental Public Body set up under the Tribunals, Courts and Enforcement Act 2007. It has a statutory duty to:

- keep the overall administrative justice system under review; and
- keep under review the constitution and working of the tribunals listed as being under its oversight, such as the Special Educational Needs Tribunal for Wales.

The Welsh Committee of the AJTC (the Committee) takes the lead in overseeing administrative justice and tribunals in Wales.

The AJTC's overarching strategic objective is to focus, first and foremost, on the needs of the users of the administrative justice system.

Further information is available at www.ajtc.gov.uk

In relation to the questions raised by the above consultation paper:

Q1. Do you have any specific comments about Section 1 of the guidance (Introduction)?

- 1.1 The Committee understands that there are a variety of travel behaviour codes across the local authorities in Wales, and across the various modes of transport used by learners to and from their educational institutions. The Committee supports the underlying aim of the Draft Travel Behaviour Code (the Code) to harmonise existing Codes, and the statutory guidance to ensure consistency in decision making.
- 1.2 Paragraphs 1.8 and 1.9 imply that the Code will apply to all learner travel to and from their education institution, including travel to independent schools. The Committee understands that different contractual arrangements exist between independent schools and learners compared to local authority schools, such that a contract exists between independent schools and the learners' parents to provide education, transport, abide by the schools rules and regulations etc rather than the learner themselves. It is difficult to see how a local authority can enforce the Code and any sanctions in this context. Independent schools also have different contractual arrangements with

transport operators and it may be similarly difficult to enforce the Code in this context. The Committee is concerned that the inclusion of unenforceable provisions in the Code or guidance jeopardises their credibility and effectiveness.

- 1.3 Paragraph 1.8 of the consultation document also indicates that the Code will apply to travel to and from education institutions including “...walking...cycling...journeys in learner’s own or other cars”. The Committee questions the ability for the Code to be enforced in such circumstances and the need to include them, given that other forms of sanction are already available for inappropriate behaviour. For example, dangerous behaviour in a car is covered by existing traffic regulations and criminal law. The Committee questions the enforceability and appropriateness of imposing sanctions on behaviour that occurs in a private vehicle. The application of the Code to learners travelling by cycling or walking to their education institution seems similarly unenforceable. For example, the ‘rights’ to “*be safe and feel happy and confident when travelling*” and “*to have clean and tidy surroundings*” seem far too general to have any practical application and it is not clear against whom cyclists and walkers can enforce them. This lack of enforceability undermines the utility of the Code as a tool for improving the safety of learner travel.
- 1.4 **The above points underline a general need to avoid anything that would seem unrealistic, inappropriate (for example, applying to very young children), or unenforceable. The Committee’s concern is that the code could in practice be undermined or rendered less credible if it continued to contain such terms.**
- 1.5 The Committee questions the inclusion in the Code, of the ‘right’ “*not to be bullied or picked on*” given that incidents of bullying are already dealt with under the behaviour codes of education institutions. It should be made clear under which code incidents of bullying will be dealt with as this will affect what sanctions the learner risks and should be made aware of.
- 1.6 There does not appear to be a lower age limit for learners to whom the Code applies. Children as young as two and a half will potentially be affected by the Code and any sanctions, as this is the age at which children with special needs commence school and usually receive transport. The Committee doubts the capacity for learners of this age to understand and implement the Code, and questions whether it would be appropriate to impose sanctions such as an oral warning from the educational institution, on a primary school age learner. The categories of behaviour included in the Guidance seem to be targeted towards secondary school learners. It may be more appropriate to have separate codes for primary and secondary school learners to take into account age and capacity to moderate behaviour.

Q2. Do you have any specific comments about Section 2 (Roles and Responsibilities)?

- 2.1 The Committee supports the guidance in paragraphs 2.3 and 2.4 of the consultation to publicise the consequences for failure to comply with the Code and welcomes the guidance encouraging education institutions and local authorities to provide training for their staff on the Code. The Committee suggests that the training be centralised for both education institutions and

local authorities to ensure consistency in decision making and application of sanctions across and within both sectors.

Q3. Do you have any specific comments about Section 3 (Local Authority Investigation of Incidents and Sanctions)?

- 3.1 The Committee is concerned that there is no statutory appeals process for withdrawal of transport by local authorities and therefore no formal appeal against decisions that may have a significant impact on the learner's education and their parents. The guidance indicates that existing complaint processes within local authorities are to be used instead. There are appeals panels from school exclusion and similar arrangements should be considered in the case of local authorities. If there is only one opportunity for redress with regard to withdrawal decisions by local authorities, this should be highlighted in the Code and information about the complaints process should be widely publicised and made available to parents and learners. The Committee recommends that information about the role of the Public Service Ombudsman for Wales in investigating complaints of maladministration against local authorities should similarly be publicised and made available to the parents and learners.
- 3.2 There is a complex procedure for investigating incidents and imposing sanctions. As mentioned previously, appropriate training needs to be given to school and local authority staff to ensure that investigation of incidents, including discussion with learners and final decision making is undertaken consistently and in accordance with the guidance.
- 3.3 The guidance, as it is currently drafted, lacks clarity in relation to key procedures in the investigation process. For example in paragraph 3.13, it is unclear what steps in the investigation process are required to be in writing, what opportunity parents and learners will have to learn what is alleged, and how they can address the allegation. The guidance also appears to allow representations to be made only where withdrawal of transport is being considered. Similar opportunity does not appear to be offered in cases where other forms of sanction are being considered, nor does it appear to apply to cases that are investigated by the educational authority. As a matter of procedural fairness, the learner should be given the opportunity to know what is being alleged of him or her, and be able to meet those allegations, before any decision is made and any sanction imposed.
- 3.4 Paragraph 3.13 refers to discussions with learners in the context of the investigation of incidents; it will obviously be beyond the capacity of younger learners to participate in the investigative process and some thought should be given to including in the guidance, an indication of the expected role of parents in this context.
- 3.5 Paragraph 2.2 makes parents responsible for the continued attendance of learners at their educational institution if transport is withdrawn. Given the rural nature of some parts of Wales and the proposal for 24 hours notice if transport is to be withdrawn, it is conceivable that alternative arrangements for transport will not be possible and the learner may be effectively excluded from school. Paragraph 3.34 allows local authorities to take into account a number of factors in determining whether to withdraw travel arrangements, including special circumstances such as special educational needs or disability of a learner.

- 3.6 The Committee suggests that liaison between the transport provider, educational institution and parents should occur on an individual basis, and that this should occur prior to learners commencing travel on the provided transport so that the transport operator has adequate support and information to understand the nature of the disability or special need. This liaison should also ensure that the local authority is aware of any particular circumstances that need to be taken into account prior to making a decision about the withdrawal of transport.
- 3.7 If accommodation of special circumstances in this situation is to be made by either the local authority or educational institution, details of how parents and/or learners can make representations in this regard should be included in the guidance training and information provided to parents. The Committee suggests that where withdrawal of transport might impose unnecessary hardship on the parent or learner, liaison between the parent and learner and the sanctioning body should occur and negotiation of alternative sanctions should be considered.
- 3.8 In paragraphs 3.5 and 3.20 the word 'verbal' should be replaced with 'oral'. In paragraph 3.21 the word 'verbally' should be replaced with 'orally'.

Q4. Do you have any specific comments about Section 4 (Incidents Investigated by Education Institutions)?

- 4.1 As mentioned above, it appears that the guidance offers an opportunity for learners and/or their parents to make representations only in cases where the local authority is considering withdrawal of transport. It is not clear whether behaviour policies of schools will include any such opportunity. In any case, the Committee believes that as a matter of procedural fairness learners should be given the opportunity to know what is being alleged of him or her, and be able to answer those allegations, before any sanction is imposed.
- 4.2 It is up to the education institution and the local authority to decide whether a learner is sanctioned under the school behaviour policy (which could include exclusion) or under the guidance to the Code (which could include withdrawal of access to transport to and from school). It is important that learners and parents are provided with enough information to understand the consequences, which appear to be different, of action taken under either policy. The circumstances in which a decision to take action under the school policy should also be made known to ensure transparency in the decision making process.

Q5. Do you have any specific comments about the Appendix?

No comment

Q6. Do you have any general comments about the scope and balance of the guidance as a whole?

- 6.1 The Committee welcomes the opportunity to comment on the Travel Behaviour Code Statutory Guidance and supports the underlying aims of the Welsh Assembly Government to improve safety on school transport and ensure consistent standards of behaviour, enforcement and sanctions across Wales. It is important that those affected by decisions of the local authorities

or education institutions in this regard have reasonable certainty about the manner in which incidents are investigated and categorised, the circumstances in which sanctions will be imposed, and the sanction that will be imposed, if any.

- 6.2 The Committee understands the context in which the Code and accompanying guidance have been drafted in light of incidents in which the safety of other transport users and learners has been placed at risk. In this context, the Committee understands the need in certain circumstances to moderate the behaviour of learners using transport, and supports the provision of guidance for local authorities and education institutions to take appropriate action.
- 6.3 In its current form, the Code contains provisions that are too general, with little clarity about what the learner is entitled to and against whom they can be enforced. The Committee is concerned that the 'rights' as they are currently framed are unenforceable and suggests a review of the draft Code to ensure that it is a credible and effective tool for improving the safety of learner travel.
- 6.4 The Committee is concerned that the guidance for investigation of incidents lacks clarity and procedural fairness in some areas. We are also concerned information about appropriate redress mechanisms is made widely available to learners and their parents. The Committee feels that good communication between local authorities, education institutions, learners and their parents, throughout the process of any alleged breach of the Code is essential to ensuring that the process is fair and transparent.

Q7. Do you have any other comments or examples of practice to offer?

No comment.