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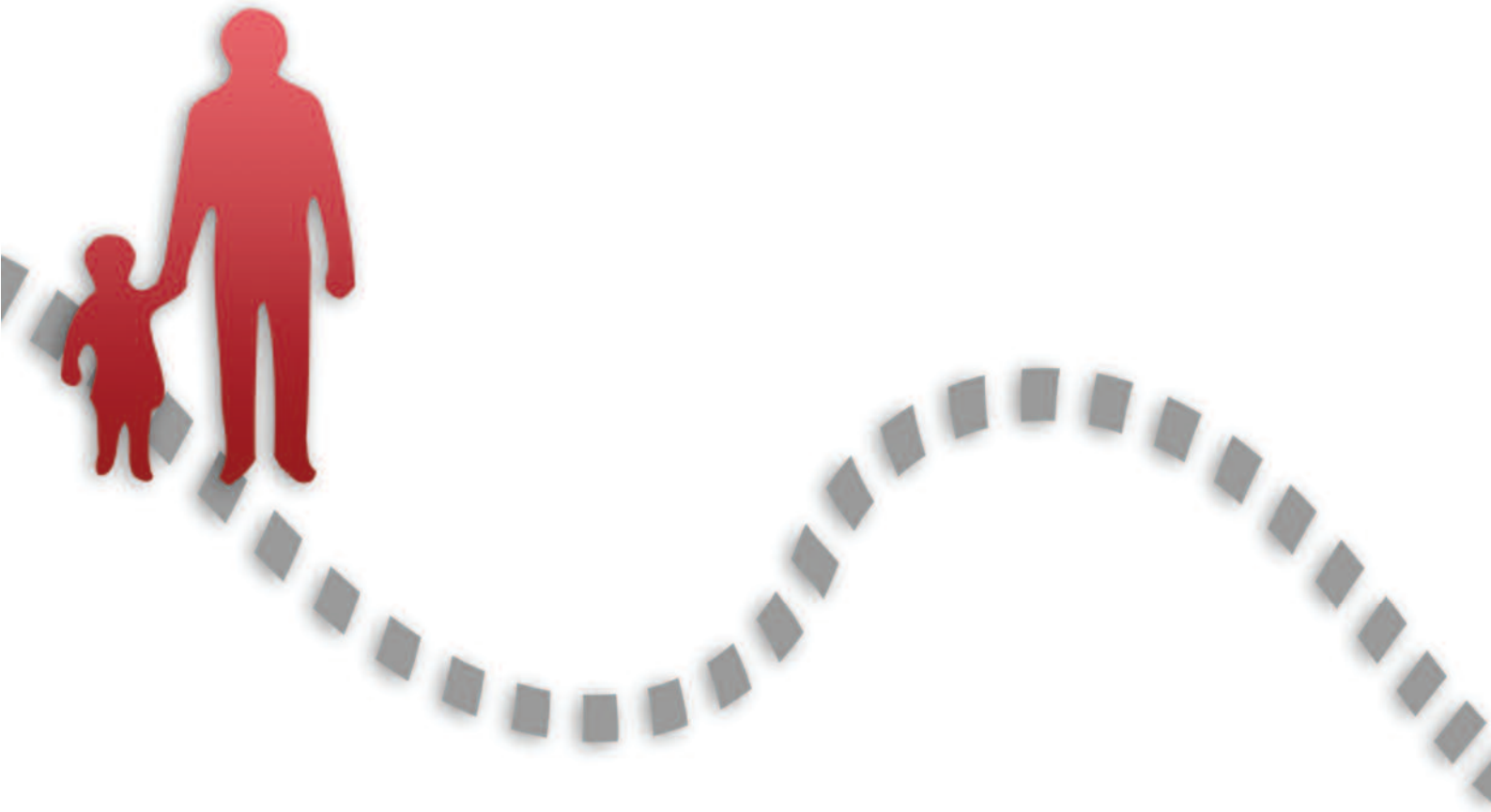

Assessment of Walked Routes to School

Guidelines

Preface

These Guidelines were produced on behalf of Road Safety GB by:

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This version was published in 2012 and updated in 2016.

The working group thanks everyone who contributed to the Guideline's development.

The Guidelines comprise three sections:
- Introduction and the Principles used in the Guidelines
- Route Assessment Procedure
- Appendices giving legislation and case law

These Guidelines have been compiled based on existing legislation, best practice, health and safety and case law. They refer to various statutory regulations. These were correct at publication, but officers should check for amendments that may have been issued since this document was published.

The advice given in these Guidelines is believed to be correct at the time of publication. While every care has been taken to ensure accuracy within this document, Road Safety GB or its advisors accept no liability whatever for the information given.

Authorities should consider seeking elected Members' approval if they propose to deviate from these Guidelines.

Contents

Section 1
Introduction and Principles

These guidelines are to help officers carry out assessments on walked routes to school where the journey is below the statutory distance. The assessments are normally required where it is claimed that the route is not safe and therefore the Local Authority should provide free transport.

The document contains a method of assessing walked routes to school and relevant extracts from Acts of Parliament and case law relating to transport to school. This should be taken as a basis from which each local authority can develop their own policy that includes what other factors, if any, are taken into account when offering free transport to those children that live within the statutory distance.

The law relating to schools transport and walked routes to school apply in England and Wales, but may differ in Scotland and Northern Ireland.

The Duty of the Local Authority to provide transport
The legal situation regarding school transport is based on a combination of Education Acts going back over 60 years. The relevant section of each Act is included in the appendices to this document. The most recent legislation states that Local Authorities should make "such travel arrangements as they consider necessary in order to secure that suitable home to school travel arrangements ... are made and provided free of charge ... to the child." (Education & Inspections Act 2006 s508B (Appendix 1))

Parents must make sure all registered pupils regularly attend school. If they do not, court action may be taken against them unless they can prove that the child's non-attendance is because the pupil is not within walking distance and the LEA has failed to provide transport. Walking distance is defined as up to 2 miles for a child under 8 and up to 3 miles for older children. The walking route must be measured by the "nearest available route" from where their home property meets the highway to the nearest school gate.

The Education and Inspections Act 2006 means that since September 2007, the right to receive free school transport has been extended:

- Children aged between 8 and 11 from low income families are also entitled to free transport if they attend their nearest school even if this is more than two miles away.
- In September 2008, the right was extended again to include Secondary aged pupils (age 11-16) from low income families who attend one of the nearest three schools to their home and this is between 2 and 6 miles away, or
- they attend the nearest school preferred on the grounds of religion or belief that is between 2 and 15 miles from their home. Details of the regulations surrounding religion and belief are included in Appendix 8.

Section 1
Introduction and Principles (cont)

Principles used in these guidelines

Nearest Available Route
The question of what is the nearest available route has been disputed since the beginning of this legislation. Case law has found that distance and not safety is the appropriate test (Shaxted v Ward 1954 (Appendix 4)) and that a child should be "accompanied as necessary" (Rogers and another v Essex CC 1986 (Appendix 6)).

Case law has found that assessments must look at the relationship between pedestrians and traffic only. Personal safety issues of children travelling alone are not considered. Local authorities are not legally obliged to provide free transport just because parents perceive the route to be unsafe on the grounds of personal safety and security.

Accompaniment of Children
In the case of Regina v Rogers and another (Appendix 5), the judgement by the House of Lords supported the line consistently taken by Essex County Council that for a route to be available, it must be a route along which a child, accompanied as necessary, can walk with reasonable safety to school. A route would not fail to qualify as "available" because of dangers which would arise if the child was unaccompanied (in this case the route was across common land).

Age of Pupil and Nature of Route
Section 509 (4) of the 1996 Education Act declares that the local education authority should take into account the age of the pupil and nature of the route (or alternative routes) they are reasonably expected to take when considering whether arrangements for travel are required (Appendix 2).

This is covered in a DfE document "Home to school travel and transport guidance" published in July 2014 (paragraphs 17 to 22). Whilst this guidance states that local education authorities should take a range of factors into consideration when conducting walking route assessments neither the Act nor the guidance provides further information on how these factors should be taken into account. In Wales the Learner Travel (Wales) Measure 2008 will apply.

Although they are broadly in line with this Road Safety GB document local authorities will need to decide for themselves how to apply the DfE guidance, also considering earlier Acts and case law.

The officer carrying out the assessment will need to use their professional judgement when applying these guidelines.

Behaviour of the road user
It is presumed that all road users will behave reasonably and responsibly.

Street lighting
On its own the absence of street lighting does not make a route unsafe.

Road Accident Record
The accident record for the route over a minimum period of 3 years should be taken into consideration. The existence of an accident record does not necessarily indicate that the route is unsafe for the journey to school, this would depend on the type, nature and relevance of the incidents. Advice from colleagues working with road casualty data may need to be taken.

Traffic flow
Where the two way (one way of a dual carriageway) traffic flow is below 240 vehicles per hour the road is assessed as safe to cross. This is based on the original County Road Safety Officers Association criteria and is equivalent to 1 vehicle every 15 seconds and allows a reasonable gap time to cross a 7m wide road at a walking speed of 3ft per second. A written record of any vehicle counts should be kept.

If the site assessment shows that traffic flow limits the opportunities to cross then a gap count could be considered.

Definitions

Available Route
An available route is any highway or public right of way that is maintained by the Local Authority. Maintained in this sense means a responsibility to keep open to the public and includes any highway, public right of way or other path or track over which public access is permitted and the use of which does not constitute a trespass. This includes roads, surfaced or un-surfaced, footpaths, bridleways or public land.

Footway
A footway or roadside strip is one that is of adequate usable walking width for the circumstances. To be usable it should be clear of overgrowth, ie shrubs and trees obstructing the footway. The road or side roads may need to be crossed to maintain access to the footway.

It may be more cost effective to clear and maintain a footway than to provide free transport.

Highways
Highways include all public rights of way and public roads.

Public bridleway
Bridleways are highways over which the right of way is on foot, bicycle or on horseback.

Public byway
Byways are open to all traffic, however they are primarily used for walking and riding.

Public footpath
Footpaths are highways over which the right of way is on foot only.

Public Right of Way
Public Rights of Way are public footpaths, bridleways and byways open to all traffic.

Public roads
Roads include motorways, trunk roads, A, B and C class roads as well as other unclassified roads that may or may not be surfaced.

Pupil
A child of compulsory school age (that is between 5 and 16 years old). Local Authorities may have their own policies on help with transport for young people over the age of 16.

Sight Lines
A sight line is important when crossing the road or walking along the roadway. For a route to be non-hazardous:

- lines of sight for a pedestrian must be enough for them to see oncoming vehicles and have sufficient time to safely take avoiding action. Vehicle speeds on individual roads would need to be taken into account.
- lines of sight for a driver (measured from a height of 1.05m) must be enough for them to see pedestrians walking along the carriageway and have sufficient time to safely take avoiding action at whatever speed they are travelling. As an absolute minimum this must be the overall minimum stopping distance for traffic at the recorded 85%ile speed of traffic on that road. (85%ile speed is the speed below which 85% of vehicles travel in normal free flow conditions – a speed survey may need to be carried out to find this information).

Note: Mean speeds may be used as an alternative to the 85%ile.

Visibility
The unobstructed distance you can see when measured from the viewpoint of a driver, measured at 1.05m from the road surface.

The unobstructed distance a pedestrian can see from the point at which they have to cross the road or can see traffic when walking on the roadway.

Step off
A “step off” is where pedestrians can step clear of the roadway onto a reasonably even and firm surface such as a roadside verge.

Traffic Interrupter
Any feature in the highway or environment that create gaps in the traffic flow eg traffic lights, roundabouts etc.

Section 2
Route Assessment Procedure

Points to Consider

The whole route from the child's home to the school should be assessed at a time children would normally be travelling to and from school.

When assessing the safety of a potential walking route, the following points should be considered.

- When assessing the safety of an “available route”, only the potential risk created by traffic, the highway and topographical conditions should be considered (1).

- Each case must be considered on its own merits. Where possible the assessment should be carried out on foot.
  Using on-line street imagery may indicate a route is hazardous, however a site survey may also be necessary. Even if it suggests a route is **not** hazardous a site survey must still be carried out.
  Note: you should be aware of how old the imagery is as it may not show recent changes to the route.

- It is assumed that children are accompanied as necessary by a responsible parent or carer (2).

- A footway, roadside strip of reasonable width and condition, a public footpath or bridleway will all normally be assumed to provide an available route for that part of the journey (3).

- On a road with light traffic flow a verge that can be stepped on by a child and accompanying parent when traffic is passing can normally be assumed to provide an available route.
  This is known as a “step off” (4).

- It is assumed that the road or side roads will be crossed to use a footway or road side strip (5).

- Many available routes may lie along roads that have neither a footway nor verge. On these roads the width of the carriageway, traffic speed and type of traffic (e.g. frequent long or heavy goods vehicles) as well as visibility/sight lines that may be affected by sharp bends, high hedgerows or other obstructions must be considered. It is likely that if a route is found to be lacking in ‘step offs’ then it is also likely to have issues with adequate visibility – the features that affect the availability of ‘step offs’ often impact on visibility – hedges, gradients etc. However, there may be exceptions to this.

- Where roads need to be crossed, the availability of crossing facilities such as central refuges, pedestrian crossings or traffic signals should be taken into consideration. Where no crossing facilities exist the risk assessment of the route should include consideration of each road crossing, bearing in mind traffic speed and flows, sight lines etc.

- The road casualty record along the route.

- A written record of the assessment should be kept.

Section 2
Route Assessment Procedure

- A plan showing the route should be attached to each assessment.
- These guidelines cannot cover every eventuality and situation as there are many subtle variations in the features of routes.

(1) Available route – see definitions, page 6.
(2) Case law – Regina v Devon County Council refers to "accompanied as necessary" (see appendix 7).
(3) Case law – Rogers and another v Essex County Council 1986 refers to available route (see appendix 6).
(4) Step-off – see definitions, page 7.
(5) Footway or roadside strip – see definitions, page 6.

*The road or side roads may need to be crossed to maintain access to the footway.

Section 2
Route Assessment Procedure

If there is a need to cross roads there must also be:

- sufficient gaps in the traffic flow and sight lines to allow enough opportunities to cross safely. The gap time analysis should be used where necessary (see page 11)

or

- Crossing facilities eg, zebra, pelican, puffin crossing etc
- Pedestrian phase at traffic lights
- School Crossing Patrol
- pedestrians refuges

If a road needs to be crossed the visibility at the location should allow a vehicle to stop, given the 85%ile speed (the speed at which 85% of the vehicles travel below) of the traffic flow. Vehicle stopping distances should be taken as those given in the Highway Code.

In many rural areas, the exercise of continuous judgement is likely to be required. No criteria can provide all the guidance or answers to every situation that may be encountered.

If there is an adequate footway throughout the whole length of the journey, and there is no need to cross the road, then the route is “safe”. (Informed judgement by the professional may be necessary depending on traffic flows and the nature of the route).

If roads have to be crossed to use a footway or to improve sight lines then it may be necessary to give advice about safe crossing places.

On some country roads the footway may not be continuous. Informed judgement will have to be made about the availability of “step off” points.

Section 2
Route Assessment Procedure

Non-hazardous Route Definition

For a route to be classed as non-hazardous there needs to be:-

Both

A

A continuous adequate footway on roads which carry normal to heavy traffic
or
"Step offs" on roads which have light traffic flow but adequate sight lines to provide sufficient advance warning to drivers and pedestrians.
or
on roads with very light traffic flow, no "step offs", but sufficiently good sight lines to provide adequate advance warning.

And

B

If there is a need to cross roads there must be:-
Sufficient gaps in the traffic flow and sight lines to allow enough opportunities to cross safely.
or
Crossing facilities (eg zebra, pelican crossings)
Pedestrian phase at traffic lights (including necessary refuges)
School Crossing Patrol
Pedestrian refuges

Road Crossing Assessments

The difficulty of crossing at a site can be assessed by considering the number of gaps in the traffic flow that are acceptable to pedestrians. Free flowing traffic may provide gaps randomly and fairly frequently but speeds tend to be higher and gaps would need to be longer in order to cross the road safely.

An acceptable gap to cross from kerb to kerb varies with each person. Most people will be able to cross two lanes of normal urban traffic in 4 to 6 seconds. Others may need larger gaps of around 10 to 12 seconds.

Gap Time

The survey should record the number of gaps in each 5 minute period that are longer than the road crossing time, using 3 feet per second as the walking speed. Four gaps in each 5 minute period indicate a road that can be crossed without too much delay. Longer gaps could be classified as multiple gaps rather than as just one gap. Transport Note 1/95 (Department for Transport) gives further information on assessing gaps in traffic flow for road crossings.

Section 2
Route Assessment Procedure

Site Surveys

Site surveys should usually take place during the period before schools starts in the morning as this is when traffic flow is generally heaviest, unless it can be shown that the afternoon flow is heavier. Further surveys should take place at the end of the school day and again at whichever period has the heaviest traffic flow, giving a minimum of three surveys. Data should be recorded in 5 minute consecutive periods.

Where there is an obstacle such as a narrow bridge along the route, professional judgement will have to be used to assess the relative risk of passing it. The gap criteria given above may be useful and assist in this type of situation.

Traffic Counts

The traffic flow can vary from very low on some country roads to very heavy in urban areas. It will also vary on individual stretches of road depending on the time of day and in some cases time of year and day of the week.

Suggested flow levels:
Low traffic flow – up to 400 vehicles per hour
Medium traffic flow – 400 to 840 vehicles per hour
Heavy traffic flow – over 840 vehicles per hour

It is difficult to define a figure for 'light' and 'very light' traffic flows as its suitability for these assessments depends on the road environment, 'platooning' of traffic and the gaps between 'platoons'. The assessor should use their professional judgement.

It is recommended that traffic counts are recorded as "passenger car" equivalent values (PCUs), by using the following factors:

Passenger Car Units

3 pedal cycles	= 1 PCU
2 motorcycles	= 1 PCU
1 Car	= 1 PCU
1 light goods vehicle (up to 3.5 tonnes gross weight)	= 1 PCU
1 Bus/Coach (over 3.5 tonnes)	= 2 PCUs
Goods Vehicles (over 3.5 tonnes)	= 2 PCUs
Goods Vehicles (over 7.5 tonnes/multi axle lorries)	= 3 PCUs

All vehicle counts are two way except on one way systems. Dual carriageways are counted as one way on each side.

Where the two way (one way of a dual carriageway) traffic flow is below 240 vehicles per hour the road is assessed as safe to cross. This is based on the original County Road Safety Officers Association criteria and is equivalent to 1 vehicle every 15 seconds and allows a reasonable gap time to cross a 7m wide road at a walking speed of 3ft per second.

Section 3
Appendix 1

Education and Inspections Act 2006

Part 6 School travel and school food
Travel to schools etc

After section 508 of EA 1996 insert—
"508A LEAs in England: duty to promote sustainable modes of travel etc
(1) A local education authority in England must—
(a) prepare for each academic year a document containing their strategy to promote the use of sustainable modes of travel to meet the school travel needs of their area ("a sustainable modes of travel strategy"),
(b) publish the strategy in such manner and by such time as may be prescribed, and
(c) promote the use of sustainable modes of travel to meet the school travel needs of their area.
(2) Before preparing a sustainable modes of travel strategy, an authority must in particular—
(a) assess the school travel needs of their area, and
(b) assess the facilities and services for sustainable modes of travel to, from and within their area.
(3) "Sustainable modes of travel" are modes of travel which the authority consider may improve either or both of the following—
(a) the physical well-being of those who use them;
(b) the environmental well-being of the whole or a part of their area.
(4) The "school travel needs" of a local education authority's area are—
(a) the needs of children and persons of sixth form age in the authority's area as regards travel mentioned in subsection (5), and
(b) the needs of other children and persons of sixth form age as regards travel mentioned in subsection (6).
(5) The needs of children and persons of sixth form age in the authority's area as regards travel referred to in subsection (4)(a) are their needs as regards travel to and from—
(a) schools at which they receive or are to receive education or training,
(b) institutions within the further education sector at which they receive or are to receive education or training, or
(c) any other places where they receive or are to receive education by virtue of arrangements made in pursuance of section 19(1).
(6) The needs of other children and persons of sixth form age as regards travel referred to in subsection (4)(b) are their needs as regards travel to and from—
(a) schools at which they receive or are to receive education or training,
(b) institutions within the further education sector at which they receive or are to receive education or training, or
(c) any other places where they receive or are to receive education by virtue of arrangements made in pursuance of section 19(1), in so far as that travel relates to travel within the authority's area.
(7) The Secretary of State must issue, and may from time to time revise, guidance in relation to the discharge by a local education authority of their duties under this section.
(8) Before issuing or revising guidance under subsection (7), the Secretary of State must consult such persons as he considers appropriate.
(9) In discharging their duties under this section an authority must—
(a) consult such persons as they consider appropriate, and
(b) have regard to any guidance given from time to time by the Secretary of State under subsection (7).
(10) References in this section to persons of sixth form age are to be construed in accordance with subsection (1) of section 509AC.
(11) In this section, "academic year" has the same meaning as in section 509AC in the case of local education authorities in England."

Section 3
Appendix 1

(1) After section 508A of EA 1996 insert—
"508B LEAs in England: travel arrangements for eligible children
(1) A local education authority in England must make, in the case of an eligible child in the authority's area to whom subsection (2) applies, such travel arrangements as they consider necessary in order to secure that suitable home to school travel arrangements, for the purpose of facilitating the child's attendance at the relevant educational establishment in relation to him, are made and provided free of charge in relation to the child.
(2) This subsection applies to an eligible child if—
(a) no travel arrangements relating to travel in either direction between his home and the relevant educational establishment in relation to him, or in both directions, are provided free of charge in relation to him by any person who is not the authority, or
(b) such travel arrangements are provided free of charge in relation to him by any person who is not the authority but those arrangements, taken together with any other such travel arrangements which are so provided, do not provide suitable home to school travel arrangements for the purpose of facilitating his attendance at the relevant educational establishment in relation to him.
(3) "Home to school travel arrangements", in relation to an eligible child, are travel arrangements relating to travel in both directions between the child's home and the relevant educational establishment in question in relation to that child.
(4) "Travel arrangements", in relation to an eligible child, are travel arrangements of any description and include—
(a) arrangements for the provision of transport, and
(b) any of the following arrangements only if they are made with the consent of a parent of the child—
(i) arrangements for the provision of one or more persons to escort the child (whether alone or together with other children) when travelling to or from the relevant educational establishment in relation to the child;
(ii) arrangements for the payment of the whole or any part of a person's reasonable travelling expenses;
(iii) arrangements for the payment of allowances in respect of the use of particular modes of travel.
(5) "Travel arrangements", in relation to an eligible child, include travel arrangements of any description made by any parent of the child only if those arrangements are made by the parent voluntarily.
(6) "Travel arrangements", in relation to an eligible child, do not comprise or include travel arrangements which give rise to additional costs and do not include appropriate protection against those costs.
(7) For the purposes of subsection (6)—
(a) travel arrangements give rise to additional costs only if they give rise to any need to incur expenditure in order for the child to take advantage of anything provided for him in pursuance of the arrangements, and
(b) travel arrangements include appropriate protection against those costs only if they include provision for any expenditure that needs to be incurred for the purpose mentioned in paragraph (a) in the case of the child to be met by the person by whom the arrangements are made.
(8) Travel arrangements are provided free of charge if there is no charge for anything provided in pursuance of the arrangements.
(9) Schedule 35B has effect for the purposes of defining "eligible child" for the purposes of this section.
(10) References to a "relevant educational establishment", in relation to an eligible child, are references to—
(a) in the case of a child who is an eligible child by virtue of falling within any of paragraphs 2, 4, 6, 9, 11 and 12 of Schedule 35B, the qualifying school (within the meaning of that Schedule) at which the child is a registered pupil referred to in the paragraph in question, and
(b) in the case of a child who is an eligible child by virtue of falling within any of paragraphs 3, 5, 7, 10 and 13 of Schedule 35B, the place other than a school, where the child is receiving education by virtue of arrangements made in pursuance of section 19(1), referred to in the paragraph in question.
(11) Regulations may modify subsections (1) and (2) to provide for their application in cases where there is more than one relevant educational establishment in relation to a child.

Section 3
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508C LEAs in England: travel arrangements etc for other children
(1) A local education authority in England may make such school travel arrangements as they consider necessary, in relation to any child in the authority's area to whom this section applies, for the purpose of facilitating the child's attendance at any relevant educational establishment in relation to the child.
(2) This section applies to a child who is not an eligible child for the purposes of section 508B.
(3) "School travel arrangements", in relation to such a child, are travel arrangements relating to travel in either direction between his home and any relevant educational establishment in relation to the child, or in both directions.
(4) "Travel arrangements", in relation to such a child, are travel arrangements of any description and include—
(a) arrangements for the provision of transport, and
(b) any of the following arrangements only if they are made with the consent of a parent of the child—
(i) arrangements for the provision of one or more persons to escort the child (whether alone or together with other children) when travelling to or from any relevant educational establishment in relation to the child;
(ii) arrangements for the payment of the whole or any part of a person's reasonable travelling expenses;
(iii) arrangements for the payment of allowances in respect of the use of particular modes of travel.
(5) A local education authority in England may pay, in the case of a child in the authority's area to whom this section applies and in relation to whom no arrangements are made by the authority under subsection (1), the whole or any part, as they think fit, of a person's reasonable travelling expenses in relation to that child's travel in either direction between his home and any relevant educational establishment in relation to the child, or in both directions.
(6) References to a "relevant educational establishment", in relation to a child to whom this section applies, are references to—
(a) any school at which he is a registered pupil,
(b) any institution within the further education sector at which he is receiving education, or
(c) any place other than a school where he is receiving education by virtue of arrangements made in pursuance of section 19(1).
508D Guidance etc in relation to sections 508B and 508C
(1) The Secretary of State must issue, and may from time to time revise, guidance in relation to the discharge by a local education authority of their functions under sections 508B and 508C.
(2) Before issuing or revising guidance under subsection (1), the Secretary of State must consult such persons as he considers appropriate.
(3) In discharging their functions under sections 508B and 508C an authority must have regard to any guidance given from time to time by the Secretary of State under subsection (1).
(4) Regulations may require a local education authority to publish, at such times and in such manner as may be prescribed, such information as may be prescribed with respect to the authority's policy and arrangements relating to the discharge of their functions under section 508B or 508C."
(2) Schedule 8 (which inserts Schedule 35B to EA 1996) has effect.

(1) After section 508D of EA 1996 insert—
"508E LEAs in England: school travel schemes
(1) Schedule 35C has effect in relation to school travel schemes.
(2) Where a school travel scheme is in force under Schedule 35C, the local education authority in England by which the scheme is made must give effect to the scheme by—
(a) making the arrangements which are set out in the scheme as described in paragraph 2(1) of that Schedule as arrangements to be made by the authority,
(b) complying with the requirement of the scheme described in paragraph 2(5) of that Schedule (requirement to

make suitable alternative arrangements),
(c) complying with the requirement of the scheme described in paragraph 3 of that Schedule (travel arrangements for eligible children), and
(d) complying with the scheme's policy applicable to charging and any other requirements of the scheme.
(3) Where a school travel scheme is in force under Schedule 35C, the local education authority in England by which the scheme is made do not have any functions under section 508B or 508C in relation to children in their area.
(4) The Secretary of State must issue, and may from time to time revise, guidance in relation to the discharge by a local education authority in England of any duty under subsection (2) or of any functions under Schedule 35C.
(5) Before issuing or revising guidance under subsection (4), the Secretary of State must consult such persons as he considers appropriate.
(6) In discharging any duty under subsection (2) and in exercising any functions under Schedule 35C, a local education authority in England must have regard to any guidance given from time to time by the Secretary of State under subsection (4)."
(2) Schedule 9 (which inserts Schedule 35C to EA 1996) has effect.
79 Piloting of school travel scheme provisions
(1) The school travel scheme provisions are to be piloted in accordance with regulations made by the Secretary of State.
(2) Regulations under subsection (1) may, in particular, provide for there to be a limit on the number of school travel schemes which may be in force while the school travel scheme provisions are being piloted.
(3) In this section, "the school travel scheme provisions" means section 508E of, and Schedule 35C to, EA 1996.
80 Power to repeal school travel scheme provisions etc
(1) The Secretary of State must prepare and publish, before 1st January 2012, an evaluation of the operation and effect of school travel schemes approved under Schedule 35C to EA 1996.
(2) The Secretary of State may by order provide for the school travel scheme provisions to cease to have effect in relation to local education authorities with effect from such date as may be specified in the order.
(3) The earliest date which may be specified under subsection (2) is 1st August 2012.
(4) The latest date which may be specified under subsection (2) is 1st August 2015.
(5) Power to make an order under this section includes power to make consequential amendments and repeals in any enactment, including this Act and enactments passed or made after the passing of this Act.
(6) In this section, "the school travel scheme provisions" means section 508E of, and Schedule 35C to, EA 1996.
After section 508E of EA 1996 insert—
"508F LEAs in England: provision of transport etc for certain adult learners
(1) A local education authority in England must make such arrangements for the provision of transport and otherwise as they consider necessary, or as the Secretary of State may direct, for the purpose of facilitating the attendance of qualifying adult learners receiving education or training at an institution outside both the further education and higher education sectors.
(2) "Qualifying adult learners" means adult learners for whom the Learning and Skills Council for England has secured—
(a) the provision of education or training at the institution in question, and
(b) the provision of boarding accommodation under section 13 of the Learning and Skills Act 2000 (persons with learning difficulties).
(3) Any transport provided in pursuance of arrangements under subsection (1) must be provided free of charge.
(4) A local education authority in England may pay the whole or any part, as they think fit, of the reasonable travelling expenses of any adult learner receiving education or training at an institution outside both the further education and higher education sectors for whose transport no arrangements are made under subsection (1).
(5) In considering whether or not they are required by subsection (1) to make arrangements in relation to a

particular person, a local education authority must have regard, amongst other things, to the age of the person and the nature of the routes which he could reasonably be expected to take.
(6) Arrangements made by a local education authority under subsection (1) must make provision for persons receiving full-time education or training at institutions mentioned in subsection (1) which is no less favourable than the provision made in pursuance of the arrangements for persons of the same age with learning difficulties (within the meaning of section 13 of the Learning and Skills Act 2000) for whom the authority secure the provision of education at any other institution.
(7) "Adult learner" means a person who is neither a child nor a person of sixth form age.
(8) The reference in subsection (7) to a person of sixth form age is to be construed in accordance with subsection (1) of section 509AC."

82 Amendments of section 444 of EA 1996 in relation to school travel
(1) Section 444 of EA 1996 (offence of failing to secure regular attendance at school of registered pupil) is amended as follows.
(2) After subsection (3) insert—
"(3A) Subsections (3B) and (3D) apply where the child's home is in England.
(3B) The child shall not be taken to have failed to attend regularly at the school if the parent proves that—
(a) the local education authority have a duty to make travel arrangements in relation to the child under section 508B(1) for the purpose of facilitating the child's attendance at the school and have failed to discharge that duty, or
(b) the local education authority have a duty to make travel arrangements in relation to the child by virtue of subsection (2)(c) of section 508E (school travel schemes) for the purpose of facilitating the child's attendance at the school and have failed to discharge that duty.
(3C) For the purposes of subsection (3B)—
(a) the reference to "travel arrangements" in paragraph (a) has the same meaning as in section 508B, and
(b) the reference to "travel arrangements" in paragraph (b) has the same meaning as in paragraph 3 of Schedule 35C.
(3D) Where the school is an independent school which is not a qualifying school, the child shall not be taken to have failed to attend regularly at the school if the parent proves—
(a) that the school is not within walking distance of the child's home,
(b) that no suitable arrangements have been made by the local education authority for boarding accommodation for him at or near the school, and
(c) that no suitable arrangements have been made by the local education authority for enabling him to become a registered pupil at a qualifying school nearer to his home.
(3E) For the purposes of subsection (3D), "qualifying school" has the same meaning as it has for the purposes of Schedule 35B (meaning of "eligible child" for the purposes of section 508B).
(3F) Subsection (4) applies where the child's home is in Wales."
(3) In subsection (5) for "subsection (4)" substitute "subsections (3D) and (4)".
(4) In subsection (6) for "subsection (4)" substitute "subsections (3B), (3D) and (4)".
(5) The amendments made by this section do not apply in relation to any failure of a child to attend at a school or other place in relation to which section 444 of EA 1996 applies which occurs on a day before this section comes into force.
(1) In section 509AA of EA 1996 (provision of transport etc for persons of sixth form age)—
(a) in subsection (9)—
(i) for "Secretary of State" substitute "appropriate authority", and
(ii) for "he" substitute "it",

(b) after subsection (9) insert—
"(9A) The "appropriate authority" means—
(a) in the case of a local education authority in England, the Secretary of State, and
(b) in the case of a local education authority in Wales, the National Assembly for Wales.", and
(c) in subsection (10), after "Secretary of State" insert "(in relation to local education authorities in England) or the National Assembly for Wales (in relation to local education authorities in Wales)".
(2) In section 509AB of EA 1996 (further provision about transport policy statements)—
(a) in subsection (5), for the words from "by the Secretary" to the end substitute "under this section—
(a) by the Learning and Skills Council for England (in the case of an authority in England), or
(b) by the National Assembly for Wales (in the case of an authority in Wales).",
(b) in subsection (6)(d), for the words from "by the Secretary" to the end substitute "for the purposes of this section by the Learning and Skills Council for England (in the case of an authority in England) or the National Assembly for Wales (in the case of an authority in Wales).", and
(c) after subsection (7) insert—
"(8) Any guidance issued by the Learning and Skills Council for England under this section must be published in such manner as the Council thinks fit."
(3) In section 509AC of EA 1996 (interpretation of sections 509AA and 509AB)—
(a) in subsection (6), after "subsection (5)" insert "in relation to its application in the case of local education authorities in England", and
(b) after subsection (6) insert—
"(7) The National Assembly for Wales may by order amend the definition of "academic year" in subsection (5) in relation to its application in the case of local education authorities in Wales."
(4) In section 18 of the Learning and Skills Act 2000 (c. 21) (supplementary functions of Learning and Skills Council for England), after subsection (5) insert—
"(6) The Secretary of State may by order confer or impose on the Council such powers or duties falling within subsection (7) as he thinks fit.
(7) A power or duty falls within this subsection if it is exercisable in connection with—
(a) the Secretary of State's function under section 509AA(9) of the Education Act 1996 (power to direct LEA to make arrangements additional to those specified in transport policy statement), or
(b) any function of the Secretary of State under any of sections 496 to 497B of the Education Act 1996 as regards anything done, proposed to be done or omitted to be done by a local education authority in England under section 509AA or 509AB of that Act."

After section 509AC of EA 1996 insert—
"509AD LEAs in England: duty to have regard to religion or belief in exercise of travel functions
(1) A local education authority in England must have regard, amongst other things, in exercising any of their travel functions in relation to or in connection with the travel of a person or persons to or from a school, institution or other place, to any wish of a parent of such a person for him to be provided with education or training at a particular school, institution or other place where that wish is based on the parent's religion or belief.
(2) The "travel functions" of a local education authority in England are their functions under any of the following provisions—

- section 508A (duty to promote sustainable modes of travel etc);
- section 508B (travel arrangements for eligible children);
- section 508C (travel arrangements etc for other children);
- section 508E and Schedule 35C (school travel schemes);
- section 508F (transport etc for certain adult learners);
- section 509AA (transport etc for persons of sixth form age).

Section 3

Appendix 1

(3) For the purposes of this section—
(a) "religion" means any religion,
(b) "belief" means any religious or philosophical belief,
(c) a reference to religion includes a reference to lack of religion, and
(d) a reference to belief includes a reference to lack of belief."
85 Further amendments relating to travel to schools etc
Schedule 10 contains further amendments relating to travel to schools and other places where education or training is received.

Section 3
Appendix 2

EDUCATION ACT 1996 Section 509

Provision of Transport etc:

(1) A local education authority shall make such arrangements for the provision of transport and otherwise as they consider necessary, or as the Secretary of State may direct, for the purpose of facilitating the attendance of persons receiving education:-

(a) at schools;

(b) at any institution maintained or assisted by the authority which provides further education or higher education (or both);

(c) at any institution within the further education sector; or

(d) at any institution outside both the further education sector and the higher education sectors, where a further education funding council has secured provision for those persons at the institution under section 4(3) or (5) of the Further and Higher Education Act 1992.

(2) Any transport provided in pursuance of arrangements under subsection (1) shall be provided free of charge.

(3) A local education authority may pay the whole or any part, as they see fit, of the reasonable travelling expenses of any person receiving education:-

(a) at a school, or

(b) at any such institution as is mentioned in subsection (1), for whose transport no arrangements are made under that subsection.

(4) In considering whether or not they are required by subsection (1) to make arrangements in relation to a particular person, a local education authority shall have regard (amongst other things):-

(a) to the age of the person and the nature of the route, or alternative routes, which he could reasonably be expected to take; and

(b) to any wish of his parent for him to be provided with education at a school or institution in which the religious education provided is that of the religion or denomination to which his parent adheres.

(5) Arrangements made by a local education authority under subsection (1) shall:-

(a) make provision for pupils at grant-maintained schools which is no less favourable than the provision made in pursuance of the arrangements for pupils at schools maintained by a local education authority;

(b) make provision for persons receiving full-time education at any institution within the further education sector which is no less favourable than the provision made in pursuance of the arrangements for pupils of the same age at schools maintained by a local education authority; and

(c) make provision for persons receiving full-time education at institutions mentioned in subsection (1)(d) which is no less favourable than:-

(i) the provision made in pursuance of the arrangements for persons of the same age with learning difficulties (within the meaning of section 15(5) at schools maintained by a local education authority, or

(ii) where there are no such arrangements, the provision made in pursuance of such arrangements for such persons for whom the authority secures the provision of education at any other institution.

(6) Regulations under section 414(6) may require publication (within the meaning of that section) by every local education authority of such information as may be required by the regulations with respect to the authority's policy and arrangements for provision under this section for persons attending institutions mentioned in subsection (1) (c) or (d) who are over compulsory school age and who have not attained the age of 19.

Section 3
Appendix 3

EDUCATION ACT 1996 Section 444

Offence: failure to secure regular attendance at school of registered pupil.

(1) If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.

(2) Subsections (3) to (6) below apply in proceedings for an offence under this section in respect of a child who is not a boarder at the school in which he is a registered pupil.

(3) The child shall not be taken to have failed to attend regularly at the school if he is...

> (a) with leave,
> (b) at any time when he was prevented from attending by reason of sickness or any unavoidable cause, or
> (c) on any day exclusively set apart for religious observance by the religious body to which his parent belongs.

(4) The child shall not be taken to have failed to attend regularly at the school if the parent proves:-

> (a) that the school at which the child is a registered pupil is not within walking distance of the child's home, and
> (b) that no suitable arrangements have been made by the local education authority or the funding authority for any of the following:-
>
> > (i) his transport to and from the school
> > (ii) boarding accommodation for him at or near the school, or
> > (ii) enabling him to become a registered pupil at a school nearer to his home.

(5) In subsection (4) 'walking distance':-

> (a) in relation to a child who is under the age of eight, means 3.218688 kilometres (two miles), and
> (b) in relation to a child who has attained the age of eight, means 4.828032 kilometres (three miles),

in each case measured by the nearest available route.

(6) If it is proved that the child has no fixed abode, subsection (4) shall not apply, but the parent shall be acquitted if he proves:-

> (a) that he is engaged in a trade or business of such a nature as to require him to travel from place to place,
> (b) that the child has attended at a school as a registered pupil as regularly as the nature of that trade or business permits, and
> (c) if the child has attained the age of six, that he has made at least 200 attendances during the period of 12 months ending with the date on which the proceedings were instituted.

(7) In proceedings for an offence under this section in respect of a child who is a boarder at the school at which he is a registered pupil, the child shall be taken to have failed to attend regularly at the school if he is absent from it without leave during any part of the school term at a time when he was not prevented from being present by reason of sickness or any unavoidable cause.

(8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) In this section 'leave', in relation to a school, means leave granted by any person authorised to do so by the governing body or proprietor of the school.

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Appendix 4

The Weekly Law Reports – Shaxted v. Ward Feb. 1954

SHAXTED v. WARD
[QUEEN'S BENCH DIVISION (Lord Goddard, C.J. Byrne and Parker, J.J.), January 25 1954.]

Education – School attendance – Duty of parent to secure regular attendance of pupil – 'available route' – Road unsafe for unescorted children – Dangerous crossing – Education Act, 1944 (S31), S39(5).

By the Education Act, 1944 S39(2)(c), a child shall not be deemed to have failed to attend regularly at school if the school at which the child is a registered pupil is not within 'walking distance' of the child's home. By S39(5) walking distance means, according to the age of the child, two or three miles measured by 'the nearest available route'.

The appellant, the father of the child, aged six years, who failed to attend school regularly, being charged with an offence under S39(1) of the Act (which provides that, if a child of compulsory school age fails regularly to attend school, the parent of the child shall be guilty of an offence), contended that, although the direct route from the child's home to the school was within the distance laid down in S39(5) part of the road was unsafe for unescorted children as it included a dangerous crossing, and, therefore, was not an 'available route'; that the nearest available safe route was more than the distance laid down in S39(5); and therefore, there was a reasonable excuse for non-attendance.

Held: Distance, not safety, was the test for determining 'the nearest available route', and, therefore, the school was within walking distance of the child's home, and the appellant was guilty of an offence.

FOR THE EDUCATION ACT, 1944, S39, SEE HALSBURY'S STATUTES Second Edition, Vol. 8, p.183.

Cases referred to:

(1)Hares v. Curtin, [1913] 2 K.B. 328; 82 L.J.K.B. 707; 108 L.T. 974;

76 J.P. 313; 19 Digest 568, 89.

Cases Stated by Kent Justices.

At a court of summary jurisdiction, sitting at Canterbury on Aug. 13, 1953, the respondent, Francis George Ward, an education welfare officer, preferred informations against each of the appellants, Bertie Herbert Harold Shaxted and Albert George Farrier, charging that each, being the parent of a child of compulsory school age, was guilty of an offence against S39(1) of the Education Act, 1944, in that the child, who was a registered pupil at Preston County Primary School, failed to attend regularly thereat between April 21 and June 26, 1953.

It was proved or admitted that each of the appellants was the parent of a child of compulsory school age who was a registered pupil at the said school and failed to attend that school during the period mentioned in the information: that each child lived in the hamlet of West Stourmouth and within the distance from the school laid down in S39(5) of the Act as 'walking distance' in relation to each such child respectively by the direct route; that this route was safe for the children to use if escorted, the bit of road near the school where, owing to the presence

of a dangerous crossing, an escort would be desirable for small children being common to both the children in question; that it was usual, and the duty of parents, to provide escort for their children to and from school, when necessary; that the education authority, nevertheless, arranged for an omnibus taking the children from Stourmouth to and from a secondary school at Sandwich to take the children of the appellants to and from school during the period in question; that on the return journey the omnibus reached the school at 4.45 p.m. to pick up these children there, they having finished their lessons at 3.45 p.m. ; that the appellants wanted a special omnibus from the school and would not provide an escort for their children; that another Stourmouth resident, a Mr S., who was a co-defendant with the appellants and gave evidence, admitted that his son could have attended the school regularly, but he 'had to stand by the other parents'.

On behalf of the appellants it was contended: (i) that the direct routes were not safe for their children to use when returning from school in a party; (ii) that the afternoon bus from school was not suitable transport for the return journey and, (iii) that, therefore, they were prevented by unavoidable cause within the meaning of S39(2)(a) of the Education Act, 1944, from sending their children to school; (iv) that the words 'in relation to a child' of the ages specified in S39(5) referred not merely to the words 'walking distance', but that those words also governed the later words 'nearest available route', limiting those words to such routes only as were safe for a child to use, that the direct routes were not safe for the children and the nearest available safe route was more than the distances specified in the section, and so the children were entitled to transport, but no suitable arrangements had been made for their transport to school. On behalf of the respondent it was contended that 'available route' meant a route which could be followed without committing trespass.

The justices were of the opinion that no defence had been made out because (i) the direct routes were safe for children when escorted; (ii) there was no unavoidable cause, because the direct routes were safe if the parents had escorted their children or arranged for their escort, and also the omnibus provided was suitable in the circumstances; (iii) the suggested interpretation of the words 'available route' was irrelevant because the justices held (a) that the direct routes were, in fact, safe for the children in question, and (b) that the omnibus provided from school was a 'suitable arrangement' for the transport of the said children; (iv) and, further, the suggested interpretation of the words 'available route' was strained and unnatural. The justices held that the school was within walking distance of the home of each appellant so that the appellants were not entitled to transport for their children, and they convicted the appellants. The second appellant withdrew his appeal.

Van Oss for the appellant, Shaxted.

Thesiger, Q.C., and Jupp for the respondent.

LORD GODDARD, C.J., stated the facts and continued: The question is whether or not the school is within walking distance of the child's home. By the Education Act, 1944 S39(1), a parent is guilty of an offence if his child fails to attend regularly at the school where he is a registered pupil, but by S39(2): "...the child shall not be deemed to have failed to attend regularly at school (c) if the parent proves that the school at which the child is a registered pupil is not within walking distance of the child's home, and that no suitable arrangements have been made by the local education authority either for his transport to and from the school or for boarding accommodation..."

We need not deal with suitable accommodation if the school is within walking distance, which by S39(5)

"...means in relation to a child who has not attained the age of eight years two miles, and in the case of any other child three miles, measured by the nearest available route."

What the justices had to decide was whether or not the school was within walking distance, and it is said that the route which the child took, and which is under two miles, is not the nearest available route because part of it is said to be dangerous for children to walk alone unescorted. I cannot read the word 'available' as meaning necessarily safe, because we can see how that word got into the Act. By the Elementary Education Act, 1870, S74(3), it was a reasonable excuse:

"That there is no public elementary school open which the child can attend within such distance, not exceeding three miles, measured according to the nearest road from the residence of such child, as the by-laws may prescribe."

The Education Act, 1921, S49(b) provided an identical "reasonable excuse". Before the Act of 1921, in Hares v. Curtin (1), in which it was suggested that a cart track could not be a road and that the walking distance had not been measured according to, "the nearest road".

LORD ALVERSTONE, C.J., giving judgement, said (1913 2 K.B. 331):

"It does not mean a road of any particular class, but simply a route from the residence of the child to the nearest school".

In the Act of 1944 the words used in S39(5) are "two miles... measured by the nearest available route". I do not think that they were meant to make any change in the law, except that a number of somewhat unnecessary words were cut out and there was substituted in the expression which has been used in this court in Hares v. Curtin (1).

To some extent I sympathise with the views of the appellant in the present case. It may be that the parents would like to bring pressure on the Kent County Council to have someone to see that this 'bit of road', as the justices call it, is safe for the children to cross - someone, for example, as is seen in London, wearing a white smock and holding a board with the words "Children Crossing, Stop". That, however, is a matter for the education authority to consider and put into operation if it thinks fit. I can only say, speaking for myself, that a route along which a child can walk and which measures not more than two miles is "the nearest available route". It may sometimes be unsafe. Sometimes the route might be flooded and the child could not walk along it, that might be a reasonable excuse for not using it on that particular day. We are not dealing with that sort of question. We are dealing with the question where the parents think it is not safe. Parliament has not substituted safety for distance as the test. Any question with regard to safety must, and I have no doubt, will, be taken into consideration by the education authority. I think in this case the justices came to a right decision and the appeal fails.

BYRNE, J.:
I agree. Counsel for the appellant contended that the meaning of the word 'available' in the Education Act, 1944 S39(5), is that there is no sound reason why that route should not be used by children. I am bound to say that I cannot read that meaning into that word. The 'nearest available route' means the method by which the two miles are measured from the child's house to the school in order to ascertain whether or not it is a walking distance."

PARKER, J.:
I agree.

Solicitors: Jaques & Co., agents for Girling, Wilson & Bailey, Margate (for the appellant); Sharpe, Pritchard & Co., agents for Gerald Birship, Maidstone (for the respondent).

[Reported by F. GUTTMAN, ESQ., Barrister-at-Law.

Section 3
Appendix 5

The Weekly Law Reports – Farrier v Ward Feb. 12, 1954

[QUEEN'S BENCH DIVISION]

* FARRIER v. WARD

1954 Jan. 25 – Lord Goddard C.J. Byrne and Parker JJ.

Education – School – Attendance – 'Walking Distance' – Direct route nor safe for children unless escorted – Meaning of 'nearest available route' – Question of safety – Education Act, 1944 (7 & 8 Geo. 6, c.31), s.39(5).

Section 39(2) of the Education Act, 1944, provides that a child under eight years of age shall not be deemed to have failed to attend school regularly if his parent proves that the school is not within walking distance of the child's home. By subsection (5): the expression 'walking distance' means, in relation to a child who has not attained the age of eight years two miles, measured 'by the nearest available route'.

The words 'nearest available route' in section 39(5) of the Act refer only to measurement of the distance between the child's home and the school; if a route fulfils the requirements of that section as to distance, the fact that it may be unsafe is not material.

CASE STATED by Kent justices sitting at Canterbury.

On July 13, 1953, informations were preferred by Francis George Ward, the County Education Welfare officer, against Bertie Herbert Harold Shaxted and Albert George Farrier, charging that each, being the parent of a child of compulsory school age, was guilty of an offence in that the child was guilty of an offence in that the child who was a registered pupil at Preston County Primary School failed to attend regularly thereat between April 21 and August 26, contrary to section 39(1) of the Education Act, 1944.

At the hearing of the informations the following facts were proved or admitted. Each defendant was the parent of a child of compulsory school age who was under eight years of age and a registered pupil at the Preston school and who failed to attend during the material period. Each child lived in the hamlet of West Stourmouth and the route from his home to the school was under two miles. These routes were safe for the children to use, if escorted. Both children had to travel by a bit of road near the school where an escort would be desirable for small children. It was usual and the duty of parents to provide escort for their children but nevertheless the education authority arranged for an omnibus which took the children from Stourmouth to and from Preston School during the period in question. On the return journey the bus reached Preston School at 4.45 p.m. to collect the children, the children at that school having finished their lessons at 3.45 p.m. The defendants wanted a special omnibus from school and would not provide any escort for their children.

It was contended for the defendants (a) that the direct routes were not safe for their children to use when returning from work in a party; (b) that the afternoon bus provided by the education authority was not suitable transport for the return journey; and (c) that for those reasons they were prevented by unavoidable cause within the meaning of Section 39(2)(c) of the Act from sending their children to school. They also contend that the words "in relation to a child" in Section 39(5) referred not merely to the words 'walking distance' appropriate to the respective ages specified in the subsection but to the later words 'nearest available route', limiting them to such

routes only as were safe for a child of the ages specified to use and that the nearest available safe route was more than the distance specified in the section.

The prosecutor contended that 'available route' meant a route which could be followed without committing trespass.

The justices were of the opinion that the direct routes were safe for children when escorted; that there was no unavoidable cause within the meaning of section 39(2)(c) because the direct routes were safe if the children had escorted the children or arranged for their escort; and that in the circumstances the bus provided was suitable. They considered, therefore, that the suggested interpretation of the words 'available route' was irrelevant, but that if it were relevant the defendants' interpretation of the words 'available route' would be strained and unnatural. Accordingly, they held that the Preston school was within 'walking distance' of the home of both appellants, who were not entitled to transport for their children. The justices convicted the defendants.

The defendant Farrier appealed.

M.D. Van Oss for the appellant

Gerald A. Thesiger Q.C. and K. Jupp for the prosecutor.

Hares v. Curtin was cited in argument [1913] 2 K.B. 328.

LORD GODDARD C.J.
The short point that arises is this: The justices found that the route which these children had to travel was 'safe for these children to use if escorted. The bit of road near the school where an escort would be desirable for small children was common to both the children in question.' I think that the justices recognized that it would be desirable for children to be escorted or in some way conducted along or across a certain piece of road where there was probably a good deal of traffic. They found that it was usual for parents to provide escort for their children to and from school, when necessary.

The real question is whether the school is within walking distance of the children's home because section 39 of the Education Act, 1944, provides that it is a reasonable excuse for the parent to prove 'that the school at which the child is a registered pupil is not within walking distance of the child's home, and that no suitable arrangements have been made by the local education authority either for this transport to and from the school or for boarding. By section 39(5); 'walking distance' means in relation to a child who has not attained the age of 8 years two miles, measured by the nearest available route. The justices have to find whether the school is within walking distance; and it is said that the route which the children took, which was under two miles, was not the 'nearest available route' because part of it was said to be dangerous for children to walk along unescorted. I cannot read the word 'available' as meaning necessarily safe, because we can see how these words came to be included in the Act.

By section 74 of the Elementary Education Act, 1870, the excuse was if 'there is no public elementary school open which the child can attend within such distance, not exceeding three miles, measured according to the nearest road from the residence of such child, as the by-laws may prescribe'. In section 49(6) of the Education Act, 1921, the reason was 'that there is no public elementary school open which the child can attend within such distance, not exceeding three miles, measured according to the nearest road from the residence of the child, as the by-laws may prescribe'. There is no difference in the words in those Acts.

Before the Act of 1921, it was suggested in Hares v. Curtin which was decided in 1913, that a cart track could not be the nearest road because the walking distance had not been measured according to the nearest road; and Lord Alverstone, giving judgement, said "It does not mean a road of any particular class, but simply a route from the residence of a child to the nearest school."

In the Education Act, 1944, the words used are "two miles measured by the nearest available route." I do not think that it was meant to make any change in the law at all, except that it omits a number of somewhat unnecessary words and substitutes the expression which was used in the court in Hares v. Curtin.

To some extent I sympathize with the views of the parents in this case, and it may be that they would like to bring pressure upon the Kent County Council to have a person on the road to see that 'this bit of the road', as the justices call it, is safe for the children to cross. Those, however, are matters for the education authority to consider and to put into operation if they think fit. I can only say that, if there is a road which measures not more than two miles or a route along which a child can walk and its measurement does not exceed two miles, that is the nearest available route. It may sometimes be unsafe; sometimes the route might be flooded, and, if that happened and the person could not walk along the road, that might be a reasonable excuse for not using it on that particular day, but we are not concerned with that but with a case where the parents think the route is not safe. Parliament has not substituted safety as a test but the distance. Any question with regard to safety must be, and I have no doubt will be, taken into consideration by the education authority. In my opinion, therefore, the justices came to a right decision and the appeal fails.

BYRNE J.
I agree. Mr Van Oss contends that the meaning of the word 'available' is that there is no sound reason why that route should not be used by children. I am bound to say that I cannot read that meaning into the word but, as it appears in the Act of 1944, all that is meant by the 'nearest available route' is the method by which the two miles are to be measured from the child's house to the school in order to ascertain whether it is a walking distance.

PARKER J.
I agree with both judgements which have been delivered.

Appeal dismissed.

Solicitors: Jaques & Co. for Girling, Wilson & Bailey, Margate; Sharpe, Prichard & Co. for Gerald Bishop, Maidstone.

Section 3
Appendix 6

House of Lords Judgement 16.10.86

All England Law Reports
7 November 1986

Rogers and another v Essex County Council

HOUSE OF LORDS

LORD BRIDGE OF HARWICH, LORD BRANDON OF OAKBROOK, LORD MACKAY OF CLASHFERN, LORD ACKNER AND LORD OLIVER OF AYLMERTON

28 July, 16 October 1986

Education – School attendance – Duty of parent to secure regular attendance of pupil – Failure to secure regular attendance – Proceedings against parent – Defence – Distance of home from school – Nearest available route – Shortest route dangerous to unaccompanied child – Whether route "available" – Education Act 1944 S39 (2)(c)(5).

The distance of the shortest public route between a house where a 12 year old child lived and the school where she was registered was 2.94 miles. Part of that route consisted of an isolated, unmade and unlit track which, particularly in winter, would be both difficult and dangerous for a young girl to cross on her own. The child failed to attend school regularly and her parents were convicted of failing to ensure her regular attendance, contrary to S39(2)(c) of the Education Act 1944. The parents appealed, relying on S39(2)(c) of the Act which provided that it was a good defence to show that the school was not within walking distance of the child's home and the local authority had not provided transport or alternative schooling arrangements. In the case of a child over eight years old, "walking distance" was defined by S39(5) as "three miles, measured by the nearest available route." The Crown Court dismissed the appeal but the parent's appeal to the Divisional Court was upheld on the grounds that the nearest available route was that route which the child could safely use unaccompanied. The local authority appealed to the House of Lords, contending that the nearest available route usable without trespassing.

Held:
For the purpose of deciding under S39 of the 1944 Act whether a school was within walking distance of a child's home, the nearest route between the child's home and his or her school was the nearest route along which the child could walk to school with reasonable safety when accompanied by an adult and a route did not fail to qualify as the nearest available route because of dangers which would arise if the child was unaccompanied. The local authority's appeal would therefore be allowed.

Notes:
For the duty of parents to secure attendance of pupils and for statutory defences to proceedings against parent s for non-attendance of registered pupils see 15 Halsbury's Laws (4th Edition) Paras32-33, and for cases on the subject see 19 Digest (Reissue) 499, 503, 3885, 3902.

Case referred to in options

Shaxted v Ward (1954) Farrier v Ward (1954)

Appendix 6

Appeal:
Essex County Council appealed, with leave of the Divisional Court of the Queen's Division given on 10 May 1985, against the decision of that court (Parker LJ and Tudor Evans J) on 19 February 1985 allowing an appeal by the respondents, Peter Albert Rogers and Violet Rogers (the parents), by way of case stated against a decision of the Crown Court at Chelmsford (His Honour Judge Ward and justices) on 13 July 1984 dismissing the parents appeal from their conviction by the justices for the county of Essex acting in and for the petty sessional division of Colchester on 23 May 1984 for an offence under SS39 and 40(i) of the Education Act 1944 by reason of the failure of the parents daughter to attend regularly at the Stanway Comprehensive School where she was a registered pupil. The Divisional Court certified that a point of law of general public importance was involved in its decision.

The facts are set out in the opinion of Lord Ackner.

Conrad Dehn QC and David Mellor for the local authority.

Gavin Lightman QC and Edward Irving for the parents.

Their Lordships took time for consideration.

16 October. The following opinions were delivered.

LORD BRIDGE OF HARWICH.
My Lords, for the reasons given in the speech of my noble and learned friend Lord Ackner, with which I agree, I would allow the appeal and answer the certified question in the negative.

LORD BRANDON OF OAKBROOK.
My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Ackner. I agree with it and for the reasons which he gives I would allow the appeal and make no order as the costs.

LORD MACKAY OF CLASHFERN.
My Lords. I have had the opportunity of reading in draft the speech prepared by Lord Ackner. I agree with it and concur in the order which he proposes.

LORD ACKNER.
My Lords, the short question raised by this appeal is: who is to pay for the transport to the Stanway comprehensive school of Shirley Rogers, a schoolgirl aged 12 at the material time? Should it be the appellants, the Essex County Council, which is the local education authority or the respondents, Shirley's parents? The local authority have offered Shirley the use of the school bus but subject to payment of the concessionary fare of £20 a term, the parents not qualifying for free transport on a means test basis. The parents, in principle, have refused to make any payment for school transport. The answer to the question is provided by the Education Act 1944 of which only a few sections need to be referred to.

Education Act 1944 Section 36 imposes on parents the duty to secure the education of their children. It provides:

"It shall be the duty of the parent of every child of compulsory school age to cause him to receive efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have, either by regular attendance at school or otherwise."

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Section 39 imposes the duty on parents to secure regular attendance of registered pupils. Shirley was registered at the Stanway School. This section provides:

(1) If any child of compulsory school age who is a registered pupil at a school fails to attend regularly thereat, the parent of the child shall be guilty of an offence against this section.

(2) In any proceedings for an offence against this section in respect of a child who is not a boarder at the school at which he is not a registered pupil, the child shall not be deemed to have failed to attend regularly at the school be reason of his absence therefrom with leave or – (a) at any time when he was prevented from attending by reason of sickness or any unavoidable cause: (b) on any day exclusively set apart for religious observance by the religious body to which his parent belongs: (c) if the parent proves that the school at which the child is a registered pupil is not within walking distance of the child's home and that no suitable arrangements have been made by the local education authority either for his transport to and from the school or for boarding ac commodation for him at or near the school or for enabling him to become a registered pupil at a school nearer to his home...

(5) In this section the expression... "walking distance" means, in relation to a child who has not attained the age of eight years two miles and in the case of any other child three miles, measured by the nearest available route".

Section 55 relates to the provision of transport and other facilities. As amended, it provides:

(1) A local education authority shall make such arrangements for the provision of transport and otherwise as they consider necessary for as the Secretary of State may direct for the purpose of facilitating the attendance of pupils at schools or country colleges or at any course or class provided in pursuance of a scheme of further education in force for their area and any transport provided in pursuance of such arrangements shall be provided free of charge.

(2) A local education authority may pay the whole, or any part, as the authority think fit, of the reasonable travelling expenses of any pupil in attendance at any school or county college or at such course or class as aforesaid for whose transport no arrangements are made under this section.

This appeal is concerned with the "walking distance" from Shirley's home to her school and in particular whether the nearest available route exceeded three miles, she being in the older age group referred to in S39(5), quoted above. The dispute arises in the following circumstances.

The facts:
The distance from Shirley's home to the school by the shortest route is 2.94 miles. That route involves crossing Copford Plains by an isolated and partly unmade track which is entirely unlighted. In winter this route is one of considerable danger for a young girl who would have to walk over Copford Plains in darkness.

Copford Plains are also extremely difficult to cross in winter and may be passable on foot in the morning but impassable by the evening. There is an alternative route by metalled roads but this is 3.2 miles in length.

The parents quite reasonably regard the Copford Plains route as unsuitable for use by Shirley, if unaccompanied. Thus, since as stated able, the local authority were only prepared to make the school bus available on payment of

the concessionary fare, which the parents were not willing to pay, Shirley stayed away from school during the period from 13 December 1983 until 17 April 1984. Informations were then preferred against the parents by the local authority alleging that the parents were guilty of an offence against S39. On 23 May 1984 the justices for the county of Essex, sitting at Colchester, convicted the parents and ordered that they both be conditionally discharged for a period of 12 months. The parents appealed to the Crown Court at Chelmsford and on 13 July 1984 the appeal against conviction was dismissed.

The appeal against sentence was allowed to the extent of substituting absolute discharges for the conditional discharges imposed by the magistrates. The Crown Court expressed considerable sympathy for the parents but concluded that they were bound by the decision of the Divisional Court in Shaxted v Ward [1954].

The parents appealed by the case stated to the Divisional Court. I have already set out the material facts which the Crown Court found. There was no finding that the route was impassable on any day that Shirley failed to attend or that the route was unsuitable, if she was accompanied. At the hearing of the appeal by the Divisional Court on 4 February 1985 the parents repeated their contention that the nearest available route of which the walking distance from a child's home to his school is measured for the purpose of the 1944 Act, must be, not merely the nearest route which a child can lawfully walk, but a route which a responsible parent would allow a child to use unaccompanied. In a reserved judgement Parker LJ, with whom Tudor Evans J agreed, accepted this and distinguished Shaxted v Ward. On 10 May 1985 the divisional Court gave leave to appeal to your Lordships' House on terms that the local authority would not seek to disturb the order for costs in the Divisional Court and would pay the parents cost of this appeal in any event. The certified point of law of general public importance is in these terms:

"Whether the nearest available route by which the walking distance of a school from a child's home is to be measured for the purposes of the Education Act 1944 must be not merely the nearest route which a child can walk without trespassing but a route which a responsible parent could allow a child to use unaccompanied."

Shaxted v Ward

This decision is, of course, not binding on your Lordships' House and whether or not the Divisional Court was entitled to distinguish it, as it purported to do, is not an issue which need concern your Lordships. Nevertheless, it was a decision of a strong court which has stood unchallenged for over 30 years and has been relied on over that period by local education authorities. It involved considering the crucial S39(5) of the 1944 Act and the facts of the case were similar to the facts in this appeal. It concerned two young children who were under eight years of age and the route from their home to the school, at which they were registered pupils, was under two miles. The route was safe for the children to use, if escorted, but there was a particular portion of the road near the school where for small children, an escort would be desirable. The prosecutor contended that "available route" meant a route which could be followed without committing a trespass. The justices accepted this submission and the parents were convicted. They accordingly appealed by case stated.

At the outset of his judgement Lord Goddard CJ said:

"The short point that arises is this: The Justices found that the route which these children had to travel was "safe for these children to use, if escorted. The bit of road near the school, where an escort would be desirable for small children, was common to both the children in question." I think that the justices recognised that it would be desirable for children to be escorted or in some way conducted along or across a certain piece of road where there was probable a good deal of traffic. They found that it was usual for parents to provide escort for their children to and from school, where necessary".

Having referred to S39 of the 1944 Act Lord Goddard CJ continued;

"The justices have to find whether the school is within walking distance; and it is that the route which the children took, which was under two miles, was not the "nearest available route" because part of it was said to be dangerous for children to walk along unescorted. I cannot read the word "available" as meaning necessarily safe, because we can see how these words came to be included in the Act."

Lord Goddard CJ then considered the earlier Education Acts where the words "measured according to the nearest road" were used and concluded that the words in the 1944 Act "measured by the nearest available route" were not intended to make any change in the law. He then stated:

"To some extent I sympathize with the views of the parents in this case and it may be that they would like to bring pressure upon the Kent County Council to have a person on the road to see that "this bit of the road", as the justices call it, is safe for the children to cross. Those, however, are matters for the education authority to consider and to put into operation if they think fit. I can only say that, if there is a road which measures not more than two miles or a route along which a child can walk and its measurement does not exceed two miles, that is the nearest available route. It may sometimes be unsafe; sometimes the route may be flooded, and, if that happened and the person could not walk along the road, that might be a reasonable excuse for not using it on that particular day, but we are not concerned with that but with a case where the parents think that the route is not safe. Parliament has not substituted safety as the test but the distance. Any question with regard to safety must be and I have no doubt, will be taken into consideration by the education authority. In my opinion, therefore, the justices came to a right decision and the appeal fails."

Byrne and Parker JJ both agreed.

It has been urged before us that in his judgement Lord Goddard CJ, when considering whether a route was available, was discounting all safety considerations. I cannot accept this submission. In the context in which the Lord Chief Justice made his observations he was concerned with a route which was said to be dangerous only if the children walked along it unescorted.

The true meaning of 'availability' in S39(5) of the Act

In the submissions made to your Lordships it was common ground that available in the context of S39(5) means capable of being used. During the course of the argument counsel for the local authority appeared reluctant to accept that for a route to be available it must be reasonably capable of being used. His reluctance seemed to stem from an anxiety on behalf of his clients not to accept the responsibility from time to time of deciding whether or not the route which is the nearest route is reasonably capable of being used by a child of the relevant age not withstanding that under S39(2) the onus is clearly on the parent to prove that the school is not within walking distance of the child's home. It is clear that the word available qualifies the word route. The availability of the route cannot be determined by the mere study of a map. That it must be reasonably practicable for a child to walk a long it to school does not, to my mind, admit of any argument. Of course it must be free from obstructions or obstacles which would make its use impracticable. Dangers inherent in a particular use are factors that must be taken into account when considering its availability. A route which involved crossing a river by means of a footbridge would, other things being equal, qualify as an available route. However, if as a result, for example, of recent severe flooding, the bridge became unstable and unsafe to use, that route would cease to be available.

The short issue in this appeal is whether 'availability' is to be measured by what is reasonable for an unaccompanied child to use? Counsel for the parents was constrained to concede that in a case of a very young school child, certainly a child of five, six or seven. Parliament must have accompanied must have assumed that the child would be accompanied, however short the distance, if there existed any real hazard, e.g. crossing a busy road. Accordingly, there would be few, if any routes in the first category provided for in S39(5) (the two-mile route) which any responsible parent would allow an unaccompanied child to use. If the availability of the route was to be measured by what is reasonable for an unaccompanied child who had not attained the age of eight years, there would have been no point in prescribing in the subsection the two mile route requirement. Any such child with very few exceptions would have to be provided with free transport, although in practice, as Parliament must have appreciated, such a child would almost always be accompanied, so the transport would not, in fact have been necessary at all. The crucial point appears not to have been considered by the Divisional Court. It is certainly not referred to in the judgement of Parker LJ.

What then was the purpose of defining 'walking distance' in relation to a child who had not attained the age of eight years? The answer, to my mind, is clear: it was simply to provide that where the nearest route from home to school was reasonably capable of being used by a child along or (in the majority of cases) with an escort and did not exceed two miles, the school was within 'walking distance' of the child's home. If, as is rightly conceded, the route does not in that situation fail to qualify as 'available' because of the dangers which would be consequent on the child being unaccompanied, when, if at all, would this route thus fail to qualify? Counsel for the parents submits that once the child is of sufficient age to go out on a street alone, then if the route us not reasonably safe for the child to walk along it unaccompanied the route is not 'available'. Quite apart from the fact that there are no words in the section to support such a submission, the test suggested is hopelessly vague. What sort of street is one to have in mind, what sort of traffic is it to carry, what time of day, indeed what weather or season is to be assumed etc? Further, is the test an objective test applicable to all children of a given age or is it to be applied subjectively to the particular child whose parents have raised the issue? The complete impracticability of such a test in itself persuades me that it was never in the contemplation of Parliament. In my judgement a route to be 'available' within the meaning of S39(5) must be a route along which a child accompanied can walk and walk with reasonable safety to school. It does not fail to qualify as 'available' because of dangers which would arise if the child is unaccompanied.

It has been argued that unless your Lordships decide that availability has to be measured by what is reasonable for an unaccompanied child, then parents who normally accompany their children, but who fail to do so temporarily because of some crisis such as illness and as a result the child fails regularly to attend school, will have committed a criminal offence. In my judgement this submission overlooks S39(2)(a) which provides that the child shall not be deemed to have failed to attend regularly if he was prevented from attending by reason of 'any unavoidable cause'.

There is a final point which I would wish to stress. Under S55 of the Act, which is set out in extensor above, the local education authority has a discretion to provide free transport where the relevant walking distance is less than three miles (or, as the case may be, two miles). The local authority in their written case fully accepted that if a local education authority failed unreasonably to exercise this discretion, it would be liable, on an application for judicial review to be ordered to carry out its statutory duty. In fact, in pursuance of their powers under S55(2) the local authority, having been satisfied that the parents did not qualify for free transport on a means test basis, in the exercise of this discretion offered the use of the school bus at the concessionary fare referred to above.

I would accordingly allow this appeal, discharge the order of the Divisional Court and would answer the certified point of law in the negative. In view of the local authority's undertaking not to disturb the order for costs made by the Divisional Court and to pay the costs of the parents of this appeal. I would make no order as to costs.

LORD OLIVER OF AYLMERTON.
My Lords. I have had the opportunity of reading in draft the speech delivered by my noble and learned friend Lord Ackner. I agree with it and concur in the order which he proposes.

Appeal allowed. No order as to costs.

Solicitors: RW Adcock, Chelmsford (for the local authority): Ellison & Co. Colchester (for the parents).

Mary Rose Plummer Barrister.

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Article: 'The Times' House of Lords – Law Report December 2nd 1988

Reasonable to expect child to be accompanied

Regina v Devon County Council, Ex parte George

Before Lord Keith of Kinkel, Lord Bradon of Oakbrook, Lord Oliver of Aylmerton, Lord Goff of Chieveley and Lord Lowry [Speeches December 1]

A local education authority has been entitled to refuse free transport to and from school for a boy aged nine who lived 2.8 miles away. The authority had been entitled to conclude that it was reasonably practicable for the boy to be accompanied and to take that into account in reaching its decision.

The House of Lords allowed an appeal by the authority from the Court of Appeal (Lord Donaldson of Lymington, Master of the Rolls, Lord Justice Parker and Lord Justice Taylor) (The Times March 22; [1988] 3 WLR49) who had reversed the decision of Me Justice Mann dismissing an application by the boy, Christopher Noel George (by his stepfather and next friend Mr Paul George), for judicial review of the authority's decision.

The Education Act 1944 provides by Section 36: "It shall be the duty of the parent of every child of compulsory school age to cause him to receive efficient full time education, by regular attendance at school or otherwise".

By Section 39:

(1) If any child of compulsory school age who is a registered pupil at a school fails to attend regularly, the parent shall be guilty of an offence.

(2) the child shall not be deemed to have failed to attend regularly if the parent proves that the school is not within walking distance of the child's home and that no suitable arrangements have been made by the local education authority for his transport to and from the school.

(5) 'walking distance' means, in relation to a child who has not attained the age of eight years, two miles and in the case of any other child three miles measured by the nearest available route.

By Section 55:

(1) A local education authority shall make such arrangements for the provision of transport and otherwise as they consider necessary, for the purpose of facilitating the attendance of pupils at schools, and the transport provided in pursuance of such arrangements shall be provided free of charge.

(2) A local education authority may pay the whole or any part, as the authority think fit, of the reasonable travelling expenses of any pupil for whose transport no arrangements are made under this section.

(3) In considering whether or not they are required by sub-section (1) above to make arrangements in relation to a particular pupil, the local education authority shall have regard (amongst other things) to the age of the pupil and the nature of the route, or alternative routes, which he could reasonably be expected to take.

(Section 55(2) was amended by section 11 of Schedule 1, Part 1 to the Education (Miscellaneous Provisions) Act 1984. Subsection (3) was added by amendment under section 53 of the Education Act (No. 2) Act 1986, which came into force on January 7, 1897.)

Mr Conrad Dehn, QC and Mr Raymond Cox for the authority: Lord Campbell of Alloway, QC and Mr John Friel for the Boy.

LORD KEITH said that the boy's route to the school was rural, unlit and without a footpath and used to some extent by tractors, milk tankers and cattle wagons.

The council's policy on school transport was set out in a document including a paragraph 3(d) revised on March 12, 1987: "Transport to be provided without charge to children within the statutory walking distance where (i) having regard amongst other things to the age of the child and the nature of the route or alternative route which he could reasonably be expected to take, they consider it necessary for the purpose of facilitating his attendance at school; (ii) an authorised officer of the school health service certifies that transport is required for the child on medical grounds; (iii) the director of social services advises that there are overriding social needs that make the provision of transport essential; (iv) the education committee decides on the merits of a particular case that special arrangements should be made."

The minutes of the council's school transport panel's decision of March 18, 1987, read:
"We have had regard amongst other things to Christopher's age (nine) and the nature of the route which he could reasonably be expected to take. We are satisfied that the route in question which is 2.8 miles long and therefore within the statutory walking distance for a child of that age is one which an accompanied child can walk with reasonable safety and that the council is not required by section 55(1) ... to make arrangements in relation to him.

"Further, in our opinion, this is not a case where, in the council's discretion, transport should be provided free of charge. None of the circumstances set out in paragraphs 3(d)(i)-(iv) of the council's policy exist.

"There is no suggestion that Christopher is not a normal healthy boy for his age. We would expect a child of Christopher's age walking this route to be accompanied but are not satisfied that it would not be reasonably practicable for one of Christopher's parents to accompany him or otherwise secure his regular attendance at school."

The reference to the child being accompanied clearly had an eye to the decision of the house in Rogers v Essex County Council (1987 AC 66, 78) where Lord Ackner had said:

"A route to be 'available' within the meaning of section 39(5) must be a route along which a child accompanied as necessary can walk and walk with reasonable safety to school. It does not fail to qualify as 'available' because of dangers which would arise of the child is unaccompanied."

To 'facilitate' section 55(1) meant to "make easy, promote, help forward," (Concise Oxford Dictionary). In an Inquiry under the Company Securities (Insider Dealings) Act 1985 (1988 AC 660, 704), Lord Griffiths, in a different context, had paraphrased "necessary" as "really needed", which was a helpful way of expressing the concept.

The question under section 55(1) regarding pupils living within the statutory walking distance was whether the authority considered arrangements for free transport to be necessary for the purpose of facilitating their attendance.

Obviously free transport would make the attendance of every such pupil easier, however close to school he or she happened to live, but that could not determine the matter. It was for the authority, and no one else, to decide whether free transport was really needed for the purpose of promoting the attendance at school of a particular pupil.

That must depend on the authority's view of the circumstances of the particular case, to which it was directed by section 55(3) to have regard. Its function in that respect could be described as a 'discretion', although it was not, of course, an unfettered discretion but rather in the nature of an exercise of judgement.

The intention of Parliament clearly, was that pupils living outside the statutory walking distance would in all cases be provide with free transport and that pupils within that distance would normally walk to school but would be provided with free transport if the authority considered it necessary for the purpose for facilitating their attendance.

His Lordship could find nothing in the council's policy document inconsistent with that intention.

It was apparent that the school transport panel had taken into account Christopher's age and the nature of the route, in particular its length. The senior assistant education officer had inspected it.

There had been material on which the panel might properly have concluded that it was reasonably practicable for the boy to be accompanied, in respect that his stepfather had stated in an affidavit that he was unemployed and available for the purpose.

There was nothing to suggest that the panel had not been exercising a judgement as to whether free transport was necessary for the purpose of facilitating Christopher's attendance at school.

It had been argued on his behalf that the matter of the accompaniment of a child was relevant only to the availability of a route under section 39(5) and that an authority was not entitled to take into account under section 55(1) even the possibility of a child being accompanied.

So, if a route, however short, was unsafe for an unaccompanied child, the authority was obliged to provide free transport. That argument had to be rejected. By section 39, the parent was under a legal duty to bring about the child's attendance at school. There were various things that a parent might have to do to that end, such as seeing that the child got up in the morning and set out in reasonable time. In the case of an unwilling child, it might be necessary for the parent to take the child to school.

In general, the parent had to do those things that were reasonably practicable to be done and that an ordinary prudent parent would do. That might include accompanying the child where it would be unsafe for it to go unaccompanied.

If a child lived 100 yards from school but the route involved crossing a busy trunk route and the parent, although available to do so, refused to accompany the child and refused to allow the child to go to school on the ground that it would be dangerous, the parent would be guilty of an offence under section 39(1); neither paragraph (a) nor paragraph (b) would avail him.

It followed that parliament had contemplated that in appropriate cases a child would be accompanied to school.

So a local education authority was fully entitled, when making a decision under section 55(1), to take into account whether or not there were any circumstances that prevented its being reasonably practicable for the child to be accompanied to school over a route that would fail to be treated as not available to an unaccompanied child.

It had not been demonstrated that the council had made any mistake in law as to the mature and extent of its duties and powers, nor had its decision in the present case been unreasonable. Lord Brandon, Lord Oliver, Lord Goff and Lord Lowry agreed.

Solicitors: Sharpe Pritchard for Mr. W. A. Burkinshaw, Exeter; Teacher Stern Selby.

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Guidance on Religion and Belief from DCSF 2006

Section 509AD of the 1996 Act (inserted by the Education and Inspections Act 2006) places a duty on local authorities in fulfilling their duties and exercising their powers relating to travel to have regard to, amongst other things, any wish of a parent for their child to be provided with education or training at a particular school or institution on grounds of the parent's religion or belief. This duty is in addition to the duty on local authorities to make travel arrangements for children of parents on low incomes who attend the nearest suitable school preferred on grounds of religion or belief, where they live more than 2 miles, but not more than 15 miles from that school considered (see paras 99 to 101). The definition of "religion or belief" follows that of the Equality Act 2006.

Under this Act, "religion" means any religion, and "belief" means any belief. References to "religion or belief" include references to a lack of religion or belief. It therefore follows that this duty covers all religions and denominations, as well as philosophical beliefs.

It should be noted that "religion" and "belief" are not opposites, and there may be considerable overlaps in the coverage of the two terms.

The definition of "religion" includes those religions widely recognised in this country such as Christianity, Islam, Hinduism, Judaism, Buddhism, Sikhism, Rastafarianism, Baha'is, Zoroastrians and Jains. Equally, denominations or sects within a religion can be considered as a religion or religious belief, such as Catholicism or Protestantism within Christianity. The Department believes that the main limitation on what constitutes a "religion" is that it must have a clear structure and belief system.

For a "belief" to be worthy of protection, it must attain a certain level of cogency, seriousness, cohesion and importance; be worthy of respect in a democratic society; and not be incompatible with human dignity or the fundamental rights of the child.

Case law suggests that "belief" equates to "conviction", and based on European case law, it has to be more than an opinion or idea. A belief must be genuinely held and the parent bears a heavy burden of showing that it is the real reason for whatever it is they are doing.

Based on case law, the Department considers that the following may be considered as philosophical beliefs in the educational context:

- parental objections to the use of corporal punishment in school;
- belief in single sex education, where that belief is based on the parent's religious views.

"Beliefs" which have been considered as not meeting the requirements of cogency, seriousness, coherence, and so on – and are not therefore included in this duty, include:

- a wish for a child to attend a particular category of school. The case law concerned a grant maintained school, but the Department would consider a specific wish to attend, for example, a grammar school as fitting this category. In the view of the Department, a local authority would not have to have regard to such a wish when determining whether or not to make transport arrangements for a particular child;
- preference for a particular type of management or governance which does not affect the curricula or teaching at the school;

- a belief that a child should be educated privately;
- a wish for child to attend school where they will be taught in a particular language;
- objection to rules requiring that a school uniform must be worn;
- content of school curriculum (sex education) provided that the curriculum did not amount to indoctrination in compatible with a parent's religious or philosophical convictions;
- objections to the curriculum, where special arrangements made by the school or authorities (such as allowing children to be withdrawn from class) ensure the curriculum is not forced on them contrary to their convictions; and
- belief that a child should receive a particular type of educational provision.

This guidance deals with the implications of this duty in relation to the duty to promote sustainable travel, and the duties and powers relating to the provision of travel arrangements to schools and other places.

"Religion or belief" and the duty to promote sustainable travel
The duty to promote sustainable travel includes assessments of the travel needs of children and young people, and of the infrastructure supporting those needs. Travel needs include travel to and from school, further education institutions, and other places where education or training might be delivered, and travel between schools, and between schools and other educational institutions (including further education institutions and all other places where education or training may be delivered).

In fulfilling this duty, local authorities must consider the travel needs of pupils whose parents express a wish, based on religion or belief, for their children to attend a particular institution, and how the existing sustainable travel infrastructure might support travel to such schools and institutions. They must also consider how the infrastructure might be improved so it better meets the needs of children and young people, and how to promote sustainable travel on such journeys.

"Religion or belief" and the provision of school travel arrangements
Many parents will choose to send their children to a school as near as possible to their home. However, some parents choose to send their children to a school with a particular ethos because they adhere to a particular faith, or philosophy. In many cases these schools may be more distant, and many local authorities adopt home to school travel policies that facilitate attendance at such schools. The Act places a duty on local authorities to make arrangements for pupils from low income backgrounds to attend the nearest school preferred on grounds of "religion or belief", where that school is between 2 and 15 miles from their home.

Whilst under the European Convention on Human Rights (ECHR), parents do not enjoy any right to have their children educated at a faith or a secular school, or to have transport arrangements made by their local authority to and from any such school, the Secretary of State hopes that local authorities will continue to think it right not to disturb well established arrangements, some of which have been associated with local agreements or understandings about the siting of such schools.

The Secretary of State continues to attach importance to the opportunity that many parents have to choose a school or college in accordance with their religious or philosophical beliefs, and believes that wherever possible, local authorities should ensure that transport arrangements support the religious or philosophical preference parents express.

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Although the provisions of the Equality Act 2006 (which places a duty on local authorities not to discriminate against a person on the grounds of their religion or belief), do not apply to the exercise of an authority's functions in relation to transport, local authorities will need to be aware of their obligations under human rights legislation.

In exercising their functions, local authorities will therefore need to respect parents' religious and philosophical convictions as to the education to be provided for their children in so far as this is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure. It may be incompatible, for example, on grounds of excessive journey length, or where the journey may have a detrimental impact on the child's education. Local authorities should also ensure that they do not discriminate contrary to Article 14 of the ECHR. For example, where transport arrangements are made for pupils travelling to denominational schools to facilitate parents' wishes for their child to attend on religious grounds, travel arrangements should also be made for pupils travelling to non-denominational schools, where attendance at those schools enables the children to be educated in accordance with their parents' philosophical convictions, and vice versa.

Children from low income backgrounds are eligible for free travel arrangements to the nearest school preferred on grounds of "religion or belief" (see paras. 99 to 101). However, local authorities may wish to use their discretionary powers to extend transport arrangements beyond this statutory requirement. Where local authorities make arrangements under their discretionary powers (section 508C), and have policies of levying charges for such transport, the Secretary of State believes that local authorities should pay careful attention to the potential impact of any charges on low income families whose parents adhere to a particular faith or philosophy, and who have expressed a preference for a particular school as a result of their religious or their philosophical beliefs. In the Secretary of State's opinion, where local authorities make travel arrangements for such children, these should be provided free of charge in the case of pupils from low income families (pupils entitled to free school meals or whose parents are entitled to their maximum level of Working Tax Credit).

Local authorities should give careful consideration to discrimination issues, and seek legal opinion if they are unsure about the effect of their policies, before publishing them each year.

Case Law referred to in this guidance:

Campbell and Cosans v UK (1982) 4 EHRR 293
Warwick v UK (1989) 60 37 DR 96
R (ota K) v Newham LBC ([2002] EWHC 405 (Admin)
Dove and Dove [2001] ScotCS 291
CB v Merton [2002] EWHC 877 (Admin); R v Department for Education and Employment ex p Begbie [1999] ELR; and W and DM v UK ((1984) 37 DR 96).
Stevens v UK 46 DR 245 (1986)
Alonso and Merino v Spain
Kjedsen, Bus, Madsen and Pedersen v Denmark (1976) I EHRR 711
T v SENT and Wiltshire CC [2002] EWHC 1474 (Admin).