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ACTION ON RIGHTS FOR CHILDREN

THE DRAFT SCHOOL TRANSPORT BILL

Submission to the Joint Committee on Human Rights

The Draft School Transport Bill has the aim of reducing traffic congestion around the start and finish of the school day. It is proposed that LEAs can apply to test out different schemes that will reduce car use for school journeys, funding such schemes without any increase in their existing budgets.

Although we are aware that the Education and Skills Committee is undertaking a major scrutiny of the Draft Bill, we do have some specific human rights concerns, in particular about school pupils whose families are on low incomes.

In the prospectus that accompanies the Draft Bill, the Government acknowledges that lack of free transport provision can restrict the rights of some parents (under Article 2 Protocol 1 ECHR) to choose schools that conform to their religious and philosophical beliefs. LEAs are advised that they should address this issue. However, the Draft Bill itself only provides that pupils from low-income families *who are attending their nearest school* ('protected child' as defined at clause 7) should receive free transport.

This does not appear to improve the position with regard to school choice for low-income families, nor put them on an equal footing with families who are better off.

We are aware that the UK's reservation to Article 2 Protocol 1 ECHR states that its provisions should not lead to 'unreasonable expenditure', but if even transport costs are viewed as unreasonable, then it is difficult to envisage what might be considered 'reasonable'. There would appear to be a danger that families on low incomes might be denied any rights under Article 2 Protocol 1.

It is arguable that the UK's reservation cannot in any case apply to new legislation. In *Campbell & Cosans* the ECtHR held that: "*Under Article 64 of the Convention, a reservation in respect of any provision is permitted only to the extent that any law in force in a State's territory at the time when the reservation is made is not in conformity with the provision*".¹

Paragraph 24 of the prospectus appears to be saying that the State's duty to '*respect the right of parents to ensure [such] education in accordance with their own religious or philosophical convictions*' does not imply a positive obligation to subsidise a particular form of education.

In *Campbell & Cosans*, the ECtHR held that: “...in the course of the drafting of Article 2 (P1-2), the words ‘have regard to’ were replaced by the word ‘respect’...the latter word means more than ‘acknowledge’ or ‘taken into account’; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State.”ⁱⁱ

In *Valsamis v Greece*, the ECtHR reiterated the above, and held that the duty to respect parents' convictions “... is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the ‘functions’ assumed by the State.”ⁱⁱⁱ

We are further concerned that clause 7(b)(i) makes provision for the LEA to offer a place at a school nearer home in order for a child to qualify for free transport. If a child is already settled at a school further away, we do not believe that it would foster her right to education under Article 28 UNCRC, or be in her best interests, to disrupt her education and bonds of friendship by moving her.

If the school were a specialist college that offered expertise in a subject for which a child had particular aptitude, then removing her to another school, or restricting her opportunity to attend there in the first place, may infringe her rights under Article 29 of the UNCRC. It would also create a conflict with parents' duties under s7 Education Act 1996.^{iv}

Even if free transport were provided to enable existing pupils to continue at their schools, difficulties could arise for families if a younger child were prevented by transport costs from starting at the same school as her older sibling.

Clause 7(2) provides that the appropriate condition for qualifying for free school transport is that a child is in receipt of free school lunches. A recent report by the LibDems^v quotes LEAs as saying that the stigma of claiming free school meals deters a significant number of pupils from doing so. It would seem that this problem is recognised by schools, some of which go to great lengths to ensure the privacy of such pupils.^{vi} Figures indicate that over 10% of eligible children do not claim free school meals, although the Government asserts that this is mainly due to lack of awareness of their availability.

If free school travel were to be dependent upon take-up of free school meals, we are concerned that some families might face a difficult choice between coping with yet more strain on family finances on the one hand, and exposing their children to possible humiliation on the other.

We would stress our belief in the importance of affordable school transport. Although we are not aware of any systematic study of the correlation between the availability of transport and regular school attendance, we do have anecdotal evidence that demonstrates a link.

LEAs will run a variety of pilot schemes for a period of five years. This represents a child's entire primary or secondary school career. We would

hope to see a high level of supervision exercised by central government, as inadequacies within pilot schemes could have serious implications for the right to education of children affected by them.

Terri Dowty
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ⁱ Campbell & Cosans v UK, 4 EHRR para 37(b)
<http://hudoc.echr.coe.int/Hudoc2doc/HEJUD/sift/40.txt>

ⁱⁱ Campbell & Cosans v UK, 4 EHRR para 37(a)
<http://hudoc.echr.coe.int/Hudoc2doc/HEJUD/sift/40.txt>

ⁱⁱⁱ Valsamis v. Greece (1) para 27
<http://hudoc.echr.coe.int/Hudoc1doc/HEJUD/sift/597.txt>

^{iv} “7. The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable-

(a) to his age, ability and aptitude, and

(b) to any special educational needs he may have, either by regular attendance at school or otherwise.”

<http://www.hmsso.gov.uk/acts/acts1996/96056--a.htm>

^v ‘pupils ashamed of free meals’ <http://news.bbc.co.uk/go/pr/fr/-/1/hi/education/3766517.stm>

^{vi} eg. (a) meal ticket system introduced to reduce bullying in Wrexham schools has been defended by a headteacher. http://news.bbc.co.uk/1/hi/wales/north_east/3100842.stm

(b) ‘Mr Meakin said their highly-publicised eye scanners would help pupils...

“It has the added advantage of ensuring that those who are on free school meals will appear no different to everyone else and does away with one of the stigmas that a lot of pupils have felt.”

<http://news.bbc.co.uk/1/hi/england/wear/3115428.stm>