

## CABINET

15 February 2016

<b>Title:</b> Home-to-School Travel Assistance Policy	
<b>Report of the Cabinet Member for Children’s Services and Social Care and the Cabinet Member for Education and Schools</b>	
<b>Open Report:</b>	<b>For Decision:</b> Yes
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
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<b>Accountable Divisional Director:</b> Ann Graham (Complex Needs and Social Care)	
<b>Accountable Director:</b> Helen Jenner, Corporate Director of Children’s Services	
<b>Summary:</b> <p>In July 2014 the Department for Education (DfE) published revised statutory guidance for local authorities regarding the provision of home-to-school travel assistance for children and young people, including those with special educational needs and/or disabilities (“the Guidance”). There have not been changes to the relevant law, but the Guidance states that local authorities must make their policy clear and easy to understand.</p> <p>The Guidance is statutory guidance, which means that the Council is under a duty to have regard to it when carrying out its duties in relation to home to school transport and sustainable travel.</p> <p>As a result, a revised policy was subsequently developed. This proposed revision contains some key changes compared with the current policy as follows:</p> <ul style="list-style-type: none"><li>• A narrowing of the eligibility criteria for home-to-school travel assistance to mirror the Council’s statutory obligations;</li><li>• A removal of <i>automatic</i> entitlement to travel provision for certain groups of children and young people towards whom no automatic legal duty to offer travel assistance is owed. The new policy proposes greater use of discretion on a case-by-case basis for these groups.</li></ul> <p>The groups of children and young people who may be affected by these changes are discussed in detail in section 2 of this report.</p> <p>In addition to the policy context underpinning this work is the financial landscape against which the Council is operating. Expenditure on home-to-school travel provision is an ongoing cost pressure, and the financial impact of these proposed changes has been evaluated and is detailed within the body of the report. Given the continuing growth in demand, with no action this pressure will continue to increase.</p>	

Following extensive discussions with the Cabinet Member for Children’s Services and Social Care and the Cabinet Member for Education and Schools, it was agreed that the proposed policy would be made subject to a full public consultation lasting 12 weeks. This consultation ran from August to November 2015.

This report will set out the findings of that consultation; discuss the options available; and, outline the implications associated with these options. It will request that Cabinet adopt the proposed policy.

### **Recommendation(s)**

Cabinet is recommended to:

- (i) Note the outcome of the public consultation on the draft proposed revisions to the Council’s Home to School Transport Assistance Policy, as set out in the consultation report at Appendix 1 to the report;
- (ii) Agree the proposed revisions to the policy as set out in section 2 of the report; and
- (iii) Adopt the new Home to School Transport Assistance Policy as set out at Appendix 2 to the report

### **Reason(s)**

To assist the Council to achieve its corporate priority of “Enabling social responsibility” in the context of its statutory responsibilities and ongoing financial pressures.

## **1. Introduction and Background**

- 1.1 The Council has a legal duty to provide travel assistance for “eligible children” as they consider necessary to facilitate their attendance at school (s508B Education Act 1996 (EA 1996)). The term “eligible children” is defined at Schedule 35B of the Education Act 1996. A duty to make arrangements only exists in the case of an eligible child, as so defined. In addition, the Council has a discretionary power to make travel arrangements for non-eligible children. The Council provides travel assistance to approximately 470 children and young people at any given time.
- 1.2 How this travel assistance is provided is governed by the “*London Borough of Barking and Dagenham Transport Policy Statement*”. There is a need to revise the policy on the provision of home-to-school travel assistance for a number of reasons:
  - In July 2014 revised statutory guidance was issued by the Department for Education (DfE) regarding the provision of home-to-school travel assistance;
  - In December 2014 savings proposals put forward by Adult and Community Services that affect the shared – and jointly funded - Passenger Transport Service (PTS) were accepted;
  - The budget for home-to-school travel assistance remains under significant pressure, with over-spends reported in all recent years, with population growth data indicating that this is only likely to increase.
- 1.3 A revision to the existing policy has been drafted titled “*The London Borough of Barking and Dagenham Special Educational Needs and Disabilities (SEND) Home-*

*to-School Travel Assistance Policy*". This document outlines the approach that will be taken to determine eligibility and provision of home-to-school travel assistance from 2016 onwards and is set out at **Appendix 2**.

- 1.4 Following extensive discussions with the Cabinet Member for Children's Services and Social Care and the Cabinet Member for Education and Schools, it was agreed that the proposed policy would be made subject to a full public consultation lasting 12 weeks. This consultation ran from August to November 2015. The findings of this consultation are presented later in the report and in **Appendix 1**.
- 1.5 It is important to note that there has been no substantive change to school transport legislation and the associated duties continue to rest with local authorities i.e. eligibility has not changed regarding the nearest suitable school concerning children and young people who by reason of their disability cannot be expected to walk to school.
- 1.6 This report sets out the findings of the consultation and the options and implications. It will request that Cabinet indicate the components of the proposed policy it wishes to adopt, those it does not and grant authority for, and agree the publication of the final "*London Borough of Barking and Dagenham Special Educational Needs and Disabilities (SEND) Home-to-School Transport Assistance Policy*" subject to a version being produced that is compliant with the wishes expressed by Cabinet.

## Financial Context

- 1.7 Additional to the policy drivers for change, there remain ongoing pressures upon the budget. In 2014/15 the budget for this area was exceeded by approximately £410k. For 2015/16 a total expenditure of £2.32m is forecast equating to an overspend of circa. £200k<sup>1</sup>. This forecast is based on the current cohort of children and young people and can be considered highly accurate. The table below illustrates this position.

Travel Assistance Type	No. of CYP	2015/16 Budget	2015/16 Forecast	Budget Pressure
Bus provided by in-house Passenger Transport Service	272	£1,290,500	£1,290,500	£0
Private Hire Vehicles (Taxis)	112	£832,000	£916,000	£200,000
Independent Travel Training/Travel Buddy Programmes	24		£42,000	
Mileage (paid directly to parents for transporting their child)	17		£7,000	
Direct Payment (paid directly for parents to commission their own provision to best suit their needs)	45		£67,000	
<b>Totals</b>	<b>470</b>	<b>£2,122,500</b>	<b>£2,322,500</b>	<b>£200,000</b>

<sup>1</sup> The reduction in overspend can be attributed to an increase in the base budget, a more robust approach to decision making concerning eligibility and tight financial management. Without this increase in the base budget (see section 3.3) the actual overspend for 2015/16 would be circa. £400k, similar to that for 2014/15.

## Notes

1. No. of CYP figure is as of 10 December 2015.
2. The total cost of the in-house Passenger Transport Service is shared with Adult Services and is £2.5m per annum. Furthermore, this is centrally recharged services. The estimated notional split (based on usage) is 51% Children's Services and 49% Adult Services.

- 1.8 It should be noted that considerable work has been undertaken to ensure maximum efficiency is being achieved, and this has realised considerable reductions in expenditure. It is now the case that significant further efficiencies cannot be realised within the existing arrangements.
- 1.9 It is crucial to understand the cost pressures outlined in this report are based on the current cohort of children and young people. Over the past 5 years the borough has experienced exceptionally high demand for school places (the highest in the country) and this includes demand for high needs provision. This growth in demand is expected to continue, translating into even greater financial pressure if the status quo is maintained. Furthermore, legislation makes it clear that that the Dedicated Schools Grant (DSG) may not be used as a source of funding, so the ongoing pressure (and any future increase) would be borne solely by the Council's General Fund.

## **2. Proposal and Issues**

### **Proposal**

- 2.1 It is proposed that the revised "*London Borough of Barking and Dagenham Special Educational Needs and Disabilities (SEND) Home-to-School Travel Assistance Policy*" be adopted. When considering this proposal, the following should be considered.
- 2.2 The Council cannot escape its duty to make suitable travel arrangements for a child that is an "eligible child". The form of assistance given, whether under the law or as a result of the Council's discretion, can vary and the Council will decide which form of assistance will be offered in any given case. It must always be suitable, which means meeting certain criteria. The Council can, however, make changes to the discretion it exercises in relation to other children and young people, but in doing so it must have regard to the Guidance and act in accordance with the law.
- 2.3 Whilst the revised policy is consistent with statutory Department for Education guidance, and complies with the law, it does propose some important changes that will impact some service users and *could* be the subject of legal challenge. The proposed changes reduce discretionary entitlement to some children and young people that they currently receive by virtue of fitting into various categories of entitlement that go beyond the legal duties owed. This does not mean that these groups of children and young people would no longer be eligible; rather the decision regarding eligibility could be taken on a case-by-case basis. A brief summary of the groups affected, and the associated financial implications, follows below.

## **Pre-school Children**

The Council only has a duty to provide travel assistance when the child is of statutory school age. Discretion has previously been used to provide transport to enable pre-school aged disabled children to attend maintained, specialist settings. It is proposed that the policy be changed to allow for a more robust application of eligibility as defined by law, for this group of children. Future awards to pre-school children will be made on an individual discretionary basis.

***Reduction in budget pressure:*** up to £45k (12 children and young people)

## **Children and young people in wheelchairs**

Wheelchair users have *all* historically been considered as *automatically* eligible for home to school transport assistance under the current policy of awards to this group. The proposed change is that no child or young person is provided with travel assistance, unless they are an “eligible child” under the law, or the Council decides to use its discretion in their case. As with all travel assistance, the form of assistance given is to be decided by the Council, and will not necessarily mean the provision of a vehicle.

***Reduction in budget pressure:*** up to £50k (9 children and young people)

## **Children with Behavioural, Emotional and Social Difficulties (BESD)**

Children with BESD as their primary need, attending specialist settings, are more likely to be able to travel independently to those schools, and this should be considered for all of these children and young people. These children and young people may, or may not, be eligible children for whom we must make travel arrangements.

***Reduction in budget pressure:*** up to £65k (14 children and young people)

## **Post-school age Students**

The Council has a duty to provide assistance for some students who have left school, possibly up to the age of 25. The current policy states that the local authority will consider travel support up to the age of 25. There is scope for reducing the level of direct travel provision, instead offering guidance towards other forms of support i.e. tapping into funding that colleges have to support these kinds of travel arrangement or the provision of Independent Travel Training.

***Reduction in budget pressure:*** up to £40k (14 children and young people)

- 2.4 An outline of the risk associated with the above options is discussed in section 8.
- 2.5 It cannot be stressed strongly enough that the proposals put forward would not *automatically* disqualify from services, any child or young person that falls into one of the above groups. Instead, these proposals provide a policy footing that shifts from *automatic eligibility* for these groups of children and young people to whom the Council does not necessarily have a statutory duty, to one that allows the Council to use discretion informed by an assessment of need to determine any level of home-

to-school travel assistance provided.

- 2.6 The above gives a *maximum* potential reduction in budget pressure against the current forecast of up to £200k per annum. It should be noted that these figures do not account for population growth and are calculated solely against the current cohort. With the growth in the child population showing little sign of abating, the potential increase in demand could reasonably be expected to result in the impact of some of the above savings being as a cost containment measure.

### **Issues**

- 2.7 It is crucial to understand the cost pressures outlined in this report are based on the current cohort of children and young people. Over the past 5 years the borough has experienced exceptionally high demand for school places (the highest in the country) and this includes demand for high needs provision. This growth in demand is expected to continue, translating into even greater financial pressure if the status quo is maintained.
- 2.8 The recently launched “Inclusive Strategy for Children and Young People with Special Educational Need and/or Disabilities – 2015-2018” has, amongst its’ aims, an objective to reduce the number of children and young people with special educational needs and/or disabilities that are educated in settings outside of the borough will also have an impact. The effects of this are likely to be positive (out-of-borough transport is amongst the most costly).

## **3. Options**

### **3.1 Option 1: Do nothing**

If the Council makes no amendments to the existing policy an updated policy that exactly mirrors the existing version will be published to satisfy the Department for Education requirement to do so. The existing financial pressure would remain and, given the population growth, likely increase.

### **3.2 Option 2: Adopt all proposed policy changes**

If the Council chooses to adopt all of the proposed policy changes, an updated policy that mirrors that appended to this document will be published, satisfying the Department for Education requirement to do so. It is highly likely that the existing financial pressures would be ameliorated – notwithstanding a greater than expected growth in the school-age population. Decisions concerning home-to-school travel assistance will be made in accordance with the law, and for discretionary elements officers will have the flexibility to take decisions based solely on need and not, as previously, a policy-dictated entitlement.

### **3.3 Option 3: Adopt some of the proposed policy changes, rejecting others**

The Council may choose to accept some of the proposed policy changes, whilst rejecting others. In this instance Cabinet is requested to provide precise details of the elements of the policy Cabinet chose to reject are made known to the Corporate Director of Children’s Services so that final published version of the policy can accurately reflect the decision of Cabinet. An updated version of the policy will be

published that reflects only those proposals that Cabinet have chosen to adopt. The existing financial pressure would be partially, but not wholly, mitigated.

## **Risks**

- 3.4 When evaluating these proposals, it is vital that this is done within the context of Barking and Dagenham, and the potential impact that this may have on children, young people, families and carers in the borough. Barking and Dagenham has high levels of deprivation. It has the 7<sup>th</sup> highest proportion of children living in low income families, has been identified as the 7<sup>th</sup> most deprived borough in London (out of the 32 boroughs in the capital) and is the 22<sup>nd</sup> most deprived borough in the country. Problems of disadvantage in education, income and health are all significant drivers of deprivation in the borough, and the proportion of children living in workless households in the borough is significantly greater than that found in England, London and in similar areas.
- 3.5 The borough is also experiencing significant growth in the child population, driven by high birth rates and economic migration into the borough. The levels of need in the borough are also increasing; referrals into Children's Social Care have risen over the past year, and this rise has seen an escalation in recent months.
- 3.6 The key risks to children, young people and their families could neatly be summarised as follows:
- The withdrawal of assisted home-to-school travel assistance results in the attendance at school of some children and young people falling.
  - Families that are already under significant economic pressures reaching breaking point, increasing pressure on other areas of Children's Services e.g. Children's Social Care. There would be an associated, but undetermined cost implication if this were to happen.
  - Failure to promote independence strongly enough, limiting the chances of a successful pathway into adulthood.
  - A reduction in transport to local provision for those Children and Young People with BESD may lead to higher placement costs as a result of parents/carers pushing for alternative, more costly provision outside of the borough. This could be ameliorated by a robust approach with local schools and ensuring that sensible financial decisions are taken on a case-by-case basis (proposed changes do not automatically exclude this cohort, but allow for a discretionary approach to be legitimately taken by the Council).
- 3.7 The key risks to the Council are reputational and financial. A poorly conceived consultation, or the perception that inequity has not been addressed, would not be well received by residents or partners. This can be ameliorated by a carefully orchestrated public consultation exercise. There also remains the ongoing financial challenge facing the Council. As has been discussed at length in this report, levels of spend exceed by some margin the allocated budget. This can be ameliorated in one of two ways; managing demand; or accepting that current levels of spend are appropriate and aligning budgets accordingly.

## **4. Consultation**

- 4.1 Given the nature of the policy, and the potential implications of any changes, it

was decided that a public consultation should be conducted to fully understand the views of our residents. To this end, and to ensure independence, an external organisation was engaged to conduct the consultation on behalf of the Council.

- 4.2 This organisation, French Squared CIC, is a social enterprise that delivers training and consultancy services in the field of children services across London and directly delivers Children's Services in the Midlands. It has extensive experience in the field of children and young people with special educational needs and/or disabilities, including consultation of this nature.
- 4.3 The consultation ran from 10 August 2015 until 4 November 2015. The appended report outlines the consultation process, summarises the findings and makes a number of recommendations LBBD may wish to consider. The recommendations give due regard to the Education Act 1996 (Sections 444 and 509), and the Special Educational Needs Code of Practice 2014. The Local Authority's duty is summarised in the Department for Education good practice guidance 'Home to School Travel & Transport Guidance' July 2014.
- 4.4 The consultation used a variety of methods to seek views. There was an online and paper-based questionnaire made available as well as a series of focus groups run. Over the 12 week consultation period, 128 completed questionnaires were received. 91 respondents were parents or carers of young people with SEN (73%). 33 respondents were professionals (27%). This included those working in education, social care, local government and the criminal justice system. Some respondents reported being professionals and carers.
- 4.5 Overall there was strong support for the draft policy, With the exception of one, every question that specifically asked, '**are you in agreement with this policy,**' had a majority of affirmative responses. The average overall satisfaction with the policy was 73.5%. The one question that received a majority of dissenters or suggested additional caveats, related to parents being financially liable for damage caused by their children in transit.
- 4.6 There was strong support for the ethos behind the policy of providing a variety of different travel assistance options. Where respondents disagreed with any particular option, it tended to relate to their own child's situation. In the focus groups all parents who initially stated they were in disagreement with a particular option acknowledged that it could be right for another child and that the principle of maximising a student's independence of travel, especially for young people at secondary school age was correct. However there was a comment on the need for reliability in the travel assistance option.
- 4.7 Whilst the majority of respondents are in support of the draft policy as it stands, the report makes a number of recommendations the Local Authority may wish to consider to optimise satisfaction and possibly result in a slightly more equitable policy. These are as follows:

**Recommendation One:** Due to the fact there is general support for the current draft policy, subject to considering some minor changes recommended below the policy should be signed off by Cabinet.

**Recommendation Two:** The Council may wish to align the annual Education,



Health and Care Plan review process with the annual travel application process. This could result in a more streamlined and cost effective process.

**Recommendation Three:** The Council may wish to remove the section in the draft policy suggesting parents could be liable for the cost of damage to LBBD transport resulting from the behaviour of their children. It would be very problematic differentiating between damage caused by behaviours relating to someone's SEND condition and wilful damage.

**Recommendation Four:** Where direct payments are received by parents for taxis, the Council or schools may wish to consider commissioning taxis on behalf of parents as the scale of economy/purchasing power of one commissioner may drive down the overall cost.

- 4.8 The draft policy appended to this document has been amended to reflect these recommendations.
- 4.9 The full consultation report, including full details of the methodology used and a complete data analysis (including access to the raw data) is appended to this report.

## **5. Financial Implications**

Implications completed by: Daksha Chauhan (Group Accountant Children's Services)

- 5.1 This report sets out the findings from the public consultation on LBBD's Home to School Travel Assistance Policy for children and young people with special education needs and/ or disabilities and is in line with the DfE guidance. It also considers the options available and outlines the implications associated with the options.
- 5.2 The SEND Transport service is reporting in year budget pressures of £200k as outlined in Section 3. Option 1 makes no amendments to the policy and would not improve the current budget position; Option 2 amends the policy and would mainly involve making changes to discretionary provision and if implemented is expected to alleviate the current budget pressure of £200k per annum. Option 3 would result in the adoption of some of the proposed changes and rejecting others, and would only partially offset the current budget pressures. Only the adoption of option 2 would enable the service to manage within existing budget provision.

## **6. Legal Implications**

Implications completed by: Lucinda Bell, Education Lawyer

- 6.1 The Council owes a duty to provide suitable travel assistance free of charge to certain children, that is, those who are eligible as specified in Schedule 35B of the Education Act 1996. In addition the Council has discretion to make arrangements for other children. This paper proposes changes to the Council's Home to School Transport Policy.
- 6.2 Part 4 of the Guidance dictates that Councils consult widely on proposed changes

to their policies and do so for a minimum of 28 days during term time.

- 6.3 It states that “Good practice suggests that the introduction of any such changes should be phased-in so that children who start under one set of transport arrangements continue to benefit from them until they either conclude their education at that school or choose to move to another school.”.
- 6.4 Changes to home to school transport policy must be made in accordance with the law to avoid legal challenge. As with all Council decisions this that declarations of interest are made, correct procedure is followed, consultation is undertaken in accordance with the Guidance and Cabinet Office Guidance, 2013, that the decision is within remit, is rational and evidence-based, and takes into account all relevant considerations. These include the proposal, consultation responses, Guidance, costs, advice from officers and the effects of the decision on others. If the decision affects those with protected characteristics under the Equality Act 2010, due regard must be had to the Council’s public sector equality duty. See below for details of this. In addition, the Council must act for the proper purpose and in compliance with the rights contained in the European Convention on Human Rights, be proportionate and be properly reasoned, with reasons recorded.
- 6.5 Members must, as ever, read all the papers that accompany this report and take legal advice if necessary.
- 6.6 Some of the proposals if adopted will cut funding to a group of residents who share characteristics protected by the Equality Act 2010, that is, they are disabled. It is also possible there are implications on service users who have other protected characteristics under this Act.

### **Public Sector Equality Duty (PSED)**

- 6.7 The Local Authority is subject to the General Duty at section 149 of the Equality Act, the Public Sector Equality Duty, to have regard to the need to
- Eliminate unlawful discrimination, harassment and victimisation; and to
  - Advance the equality of opportunity between different groups and foster good relations between different groups.
- 6.8 It is essential that all evidence relating to the Equality Act is considered in making this decision.
- 6.9 There have been several challenges to changes to home to school transport policies and adverse LGO (Local Government Ombudsman) decisions.

### **7. Other Implications**

- 7.1 **Corporate Policy and Customer Impact:** An Equality Impact Assessment has been completed and is available upon request.
- 7.2 **Safeguarding Children:** The changes to the policy in and of themselves present no specific safeguarding concerns. It is imperative that an appropriate assessment of risk forms part of any assessment of eligibility, and it is apparent that this will be the case.

Much as is the case now, procurement exercises for home-to-school travel provision should ensure that the Council's expectations toward providers operating on its behalf are built into contracts, and that a mechanism exists for highlighting any safeguarding concerns raised, and responding to these concerns promptly.

The recommendation that Council approved frameworks of providers should be available for families to access will be a useful tool in minimising the risk associated with families directly purchasing from the market, often from providers that have not been as rigorously vetted as those attached to an approved Council contract.

- 7.3 **Health Issues:** Some pupils with disabilities and medical needs do not need EHC plans. Similarly, it is not necessary for children to have an EHC or Statement of Special Needs to be an eligible child for the purposes of the travel assistance duty.

### **Public Background Papers Used in the Preparation of the Report**

- The Department for Education publication "*Home to school travel and transport guidance: statutory guidance for local authorities*" July 2014 ([Guidance Document](#))

### **List of Appendices**

**Appendix 1** - Full Report: "*Consultation on London Borough of Barking and Dagenham Home to School Travel Assistance Policy (December 2015)*"

**Appendix 2** - Policy: "*London Borough of Barking and Dagenham: Special Educational Needs and Disabilities Home to School Travel Assistance Policy (December 2015)*"