



Travel Assistance Policy for 0–25 Year Olds in Education

Call In by the Children's Social Care O&S Committee

1 Request for “Call-In”

- 1.1 On 16th April 2019 Cabinet took a decision:
 - 2.1 Approved the adoption of the 0-25 Policy for Home to School Transport (see Appendix A);
Approved the introduction of the phased implementation as set out in the report at section 3.33 for current and new users of transport assistance to education provision.
- 1.2 A request for call-in was made to the Children's Social Care O&S Committee by Councillors Alex Yip and Debbie Clancy on 23rd April 2019.
- 1.3 The Children's Social Care O&S Committee considered the request for call-in at its meeting on 2nd May 2019. At the meeting the Committee heard from Councillor Kate Booth (Cabinet Member for Children's Wellbeing), Anne Ainsworth (AD for Skills & Employability), Ian Burgess (Head of Law, Education), Julia Davey (Education Adviser) and Jennifer Langan (Travel Assist Lead).

2 Request for Call-In

- 2.1 Councillor Alex Yip and Councillor Clancy set out the reasons for the request for call-in. They expressed the view that the far reaching implications of this important policy override any perceived concerns regarding timelines and potential delay. The risk register highlights potential legal challenges and clarification was sought about whether legal advice had been obtained before the policy was submitted to Cabinet.
- 2.2 Cllr Yip proposed that the following call-in criteria applied:
5 – the Executive appears to have overlooked some relevant consideration in arriving at its decision:
 - Various concerns were raised in relation to the consultation:
 - The adequacy of the length of the consultation period.
 - The timings of some of the meetings / stakeholder events with some of these not being suitable for parents and service users.



- The short length of time between the end of the consultation period and the report being submitted to Cabinet did not allow sufficient time to adequately consider the feedback from the consultation.
- The report which was submitted to Cabinet was late and had very few changes which did not adequately reflect the feedback received. This calls into question whether the concerns raised in the consultation had sufficiently been taken into account and been adequately reflected in the final policy.
- The question regarding the stage 2 appeals process states 'to what extent do you agree with changing the Stage 2 Appeal Panel to a panel of independent Council Officers'. The objectivity of the wording was questioned as there was no mention that the panel is currently made up of a panel of cross-party independent elected Members. Therefore, it was questioned how will a panel of officers will be more independent than the current arrangements.
- Members of the committee had previously requested to see a 'tracked change' version of the policy that went to Cabinet so amendments made after the consultation could easily be identified. This was never provided. Also, Members only received the response from the DfE late on Wednesday 1st May 2019, the day before the call-in meeting, and then had to go through the policy that went out to consultation to compare it with the policy that went to Cabinet to identify whether the suggested changes had been incorporated.

6 – the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely so to do:

- The view was strongly expressed that it is particularly important that the policy needs to be clear to enable parents to easily understand whether their child may be eligible for travel assistance and that this is not the case with the policy as it currently stands. The committee members agreed that there was a lack of clarity around the policy currently and that the current format of the policy is too long and not very user friendly or easy for parents to understand (this had been raised previously by the committee).
- Specific examples were given where the policy is still not sufficiently clear which will inevitably lead to future challenge and controversy. It was noted that there were many comments raised by parents in response to the consultation, especially around the definition of what is deemed to constitute 'exceptional circumstances' and 'unsafe routes'. However the draft version of the policy which was consulted on in March and the final version approved by Cabinet in April showed few alterations and did not address many of the concerns raised.
- The policy still does not include examples or definitions to clarify what is meant by 'exceptional circumstance', 'discretionary', or 'unsafe routes'. It was suggested that the inclusion of case studies with examples of what would/would not be accepted would help the understanding of parents. Given that there has been a history of the Council having significant challenges with



the implementation of the travel assistance policies previously, it is imperative that this is addressed in the final policy.

9 – the decision appears to give rise to significant legal, financial or propriety issues:

- The consultation period ended on 2nd April 2019 and the response from the DfE, who are a statutory consultee, was received on the 9th April 2019, which was after the end of the consultation period. This raises concerns as to whether the consultation period should have been longer and whether there was sufficient time to properly consider their comments – there would have been only four working days between the receipt of the letter and the decision by Cabinet.
- Much anxiety was expressed by the scrutiny Members about the fact that only two of the areas raised in the DfE response were addressed in the final policy.
- Specifically (all references below are to paragraphs in the Travel Assistance Policy):
 - There are four categories of eligible children and one of the categories, category 3, was not mentioned at all in the draft policy which went to consultation. This is one of the statutory duties. This was subsequently rectified in the amended policy after it was highlighted in the DfE letter. However, the fact that this was omitted in the draft policy that went to consultation, after legal advice had been sought from both internal legal services and external counsel raised doubts regarding the legality of the policy and the validity of the consultation.
 - In paragraph 4 regarding travel concessions, bursaries, state benefits etc – the wording had been changed to clarify that it is only applicable to persons of sixth form age.
 - In paragraph 4 the Council's policy states that 'parents are expected to accompany their children to school or college where necessary until they turn 18 unless there is a good reason why this is not possible'. The DfE stated that 'having a blanket expectation, especially in cases where a child may have SEN or a disability, is not appropriate'. Members were informed that it was considered there was no legal reason to change the wording of the policy.
 - Paragraph 5 – the contradictory nature of the policy in relation to types of travel assistance and some of the specific details requested in the application forms agreed at Cabinet was highlighted. The DfE letter is very clear that a number of the questions that parents are required to answer within the application form are not relevant to determine eligibility. It was acknowledged by the Cabinet Member and Officers that the forms need to be improved. The Cabinet Member described the application form as 'clunky' and in need of being redesigned which could be done following the approval of the policy and Members were assured that this would happen. Members queried the legality of altering the documents after they had been agreed as part of the policy at Cabinet. Members were informed that officers are allowed to alter the documents appended to the policy so long as this is clear when Cabinet makes the decision.



However, it is not clear whether Cabinet were aware that the forms included with the policy were a separate appendix and not part of the policy that was being adopted. This is supported by the understanding underlying the letter from the DfE who state 'we do not think, that in the current format ... that the policy is particularly easy for a parent to understand, as it is very long (80 pages in total)'. The letter also comments in detail on the application forms on the assumption they are part of the policy that is being adopted. In the pack of cabinet papers none of the appendices are marked as appendices. Scrutiny Members felt that the forms should be redesigned as part and parcel of the decision to approve the policy together with the appendices. Scrutiny Members felt that it was an important part of the policy to take account of the comments by DfE around what needed to be asked and which questions were inappropriate and should be removed to make it more user friendly.

- Paragraph 10 – 'the consideration of a child's address in these circumstances should not preclude their eligibility for home to school travel support, as this may be out of their control and entirely legitimate arrangements'. However, Members were informed the wording had not been amended due to legal advice that this was not necessary.
- Paragraph 14 – the policy as currently drafted applies a blanket policy when children have an EHC plan and where the school that is not the nearest qualifying school is named on the EHC plan which says that the parents will be responsible for transporting them. The DfE Letter states that this is 'not appropriate' as these should be considered on individual circumstances. However, Members were informed the wording had not been amended due to legal advice.
- Paragraph 35 (now paragraph 37) – the clarification suggested in relation to the phrase 'young persons' was not reflected in the policy as legal advice was that clarification was unnecessary.
- Councillor Clancy re-iterated issues that had been raised at the previous request for call in and it was felt by the Chair that these were still relevant. These are set out in Appendix A.

3 Executive Response

3.1 In response to the points made the Cabinet Member and officers responded that:

- The Cabinet Member provided assurance that nothing had been rushed and adequate time had been taken for the consultation (45 days in total and 28 working days) and to consider and incorporate the responses to the consultation. This included the late response from DfE which was received outside of the consultation period but which scrutiny Members were assured had been carefully considered. The Cabinet Member had also been advised that the policy was legally compliant.



- An extensive consultation had been carried out and the feedback was broadly in agreement which is why only a few changes had been made to the draft policy.
- Having a single policy for 0-25 is seen as best practice.
- The responses had been regularly reviewed on an ongoing basis throughout the consultation period which facilitated the quick turnaround at the end of the consultation to allow for the amended policy to be presented to Cabinet.
- Stage 2 Appeals – there was disagreement regarding the point raised on the wording of the question and it was felt that they had taken into account responses and good practice from other local authorities.
- It was acknowledged that the application forms do need to be amended and improved and it is intended that this will be done in collaboration with the Parent Carers Forum.
- They are looking at the development of a quality framework so there will be clear processes around decision making.
- There are no definitions in the DfE guidance regarding unsafe routes and exceptional circumstance, but it was acknowledged that perhaps they could look and see if examples can be included in the policy, which would help to provide some clarity for parents and carers.

4 The Committee Resolution

4.1 The Committee resolved to call-in the decision for reconsideration by Cabinet, by a unanimous vote of six Members present at the meeting. The concerns of the committee Members were around criteria 5, 6 and 9 as set out below:

5 – *the Executive appears to have overlooked some relevant consideration in arriving at its decision* – The specific concerns raised are set out in paragraph 2.2. The scrutiny Members repeatedly stressed the overriding importance of ensuring that the policy is correct. This requires that the policy should adequately reflect the responses to the consultation to minimise the potential legal ramifications further down the line. An example referred to the recent Ombudsman's judgement in favour of the complainant citing injustice caused by the Council, due to the way the Council had assessed an application for travel assistance.

Specifically, despite assurances provided that the detailed response from the DfE had been carefully considered and taken into account in the draft policy, the scrutiny Members remained concerned that the response from the DfE has not been adequately incorporated or reflected in the policy. The comment was made that the policy was originally approved in 2013 but not implemented until 2016 so the Council has spent a number of years developing this policy to meet their statutory obligations and that sufficient time needs to be given now to adequately reflect the responses to the consultation and specifically to consider and reflect on the response from the DfE.



6 – the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely so to do - this relates to the fact the policy still does not include examples or definitions of 'exceptional circumstances', 'discretionary', or 'unsafe routes' which already has and, it was felt, will inevitably lead to future challenge and further controversy. This needs to be seen in the context of the council's history of significant challenges with the implementation of the travel assistance policies previously, which is why it is imperative that this is addressed in the final policy to restore the trust of the parents and carers.

- *9 – the decision appears to give rise to significant legal, financial or propriety issues*
 - The DfE response to the consultation was provided with a view to supporting the Council to be as clear as possible in providing accurate and helpful advice to parents and carers. Considerable anxiety was expressed and concerns were raised by the scrutiny Members throughout the meeting about the fact that only two of the areas raised in the DfE response were actually addressed in the final policy. These issues are set out in detail in paragraph 2.2. These concerns remained in spite of assurances provided that the points raised by the DfE had been considered but that it was not considered necessary to make changes to the policy as a result. This left a question which remained in the minds of the scrutiny Members about whether the policy as it stands is legally compliant and is an important reason why the committee felt it necessary to request that the Cabinet should be given the opportunity to review and reconsider the final policy.

4.2 I therefore formally ask the Cabinet to reconsider its decision as outlined above. In particular Cabinet need to ensure that the lessons are learned regarding consultation, that greater clarity is provided to help parents and carers, that the policy is child-led and not budget-led, and above all to assure themselves that the policy adequately reflects the Council's legal and ethical responsibilities.

Councillor Mohammed Aikhlaq

Chair, Children's Social Care Overview and Scrutiny Committee

BIRMINGHAM CITY COUNCIL

CHILDREN'S SOCIAL CARE OVERVIEW AND SCRUTINY (O&S)

COMMITTEE – PUBLIC MEETING

13:00 hours on Tuesday 8th January 2019, Committee Rooms 3 & 4 - Actions

Present:

Councillor Mohammed Aikhlaq (Chair)

Councillors: Diane Donaldson and Shabrana Hussain

Also Present:

Councillor Kate Booth, Cabinet Member for Children's Wellbeing

Councillor Debbie Clancy

Councillor Ken Wood

Councillor Mary Locke, Learning, Culture and Physical Activity O&S Committee

Anne Ainsworth, Acting Corporate Director for Children and Young People

Rose Kiely, Group Overview & Scrutiny Manager

Jennifer Langan, Travel Assist Lead

Sharon Scott, Acting AD for SEND

Amanda Simcox, Scrutiny Officer

1. APOLOGIES

Apologies were submitted on behalf of Councillors: Charlotte Hodiola, Kerry Jenkins, Lucy Seymour-Smith and Alex Yip.

2. DECLARATIONS OF INTERESTS

The Chair declared that he is on the Board of Directors for the Leigh Academy Trust.

3. REQUEST FOR CALL IN: TRAVEL ASSIST

(See documents 1, 2 and 3)

The Chair advised Members that the purpose of the meeting is to discuss whether the Committee should, or should not, exercise its power of Call In – that is: whether to formally request that the Executive reconsiders its decision. Members of the Learning, Culture and Physical Activity O&S Committee are also invited to attend committee meetings when SEND and Travel Assist is being discussed and the Chair welcomed Councillor Mary Locke to the meeting.

Councillor Wood's reasons for the request for call in included:

- There is increasing demand and it is vital to get this right.
- There is insufficient / omitted information:
 - No risk assessment attached.
 - Does not include potential spend.
 - There are no timelines.
- There is a policy error as there should be two clear policies rather than one policy. These would assist with administering the policies and handling appeals:
 - A clear policy for distance of walking to school.
 - A clear policy for Special Educational Needs and Disabilities (SEND).
- The policy mentions the nearest qualifying school, what about schools that are named in the Education and Health Care Plan (EHCP)?
- It does not take into account lessons from the past, for instance, Personal Transport Budgets (PTBs) are a huge issue and do not really work in a lot of cases. Also, will PTBs cover the cost of driving through the Clean Air Zone (CAZ)? In addition, the wording in the policy states an 'increased emphasis on the use of Personal Transport Budgets' and officers will therefore steer families towards PTBs.
- The policy mentions exceptional circumstances but this needs to be clearer.
- The Council is putting the 'cart before the horse' as it is consulting on a policy when it has already agreed the commissioning strategy. Travel Assist is a historically huge issue, whereby children are legally entitled to assistance which they do not always get. Therefore, there needs to be a spending risk assessment.
- There is controversy as the policy needs to put the children first. There have already been protests in Walsall regarding proposed cuts to assisted travel.

Councillor Clancy's reasons for the request for call in included:

- This is a budget led approach which is overshadowing a child led approach.
- Criteria No 5: the Executive appears to have overlooked some relevant consideration in arriving at its decision.
 - Cabinet receives a summary of performance and the EHCPs have a red flag rating. This is due to them not being assessed in a timely manner and this could have an effect on Travel Assist. This rating has been overlooked when making the decision.
- Criteria No 6: the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely to do so:
 - Independent travel training was discussed when Councillor Clancy was on the Education and Vulnerable Children O&S Committee. This is now being discussed again and it says this is well received by schools. Councillor Clancy queried how the Committee can measure and scrutinise whether the independent training has succeeded?
- Criteria No 8: there is a substantial lack of clarity, material inaccuracy or insufficient information provided in the report to allow the Overview and Scrutiny Committee to hold the Executive to account and/or add value to the work of the Council:

- Lack of transparency as the risk register has not been included.
- Paragraph 3.4 refers to developing more local special educational provision within the city. This is a good way forward, however, no information is given as to how this will be done. How can this then be scrutinised? For instance, what are the forecasts and will demand be met by using existing or new buildings etc?
- Criteria No 9: the decision appears to give rise to significant legal, financial or propriety issues:
 - Paragraph 3.5 refers to over 330 additional families having successfully applied for specialist transport during the 2017/18 academic year and the numbers of children being transported across the city has grown year on year. Therefore, this could happen in future years and there is not enough information on the indication of future demand.
 - PTBs in many cases do not work. This may lead to an increase in cars and congestion. Also, schools are already congested with some having only one exit/entrance. In addition does the Personal Transport Budget cover the cost for the CAZ?
 - There is no risk register attached and what is the risk methodology?
 - A lot of residents go to Councillors with help with Travel Assist and therefore where is the democracy if you remove Councillors from the stage 2 appeals process?
- The policy does not meet the Council Plan's priorities and as per Councillor Wood's point, there should be two policies.
- There is no reference in the policy that it will feed into the SEND process.
- There has already been an issue with guides and this service needs to be "child centred".

Councillor Kate Booth, Cabinet Member for Children's Wellbeing and Anne Ainsworth, Acting Corporate Director for Children and Young People welcomed the opportunity to feed back to the Committee and presented the reasons for the decision and these included:

- They are looking for approval to consult on the policy and they have taken into account legal advice and best practice. They have had conversations with the barrister and it is good practice nationally to have one policy. They will discuss this as part of the consultation.
- They very much welcome early conversations and the consultation will be robust and genuine and this will shape the final policy.
- The contract has been extended 13 times and the commissioning needs to be undertaken, as per the June 2018 Cabinet report the contract expires on 31 October 2019.
- PTBs have a bad reputation in Birmingham and prior to 2010 these were not organised well. They have taken legal advice in the last 4 – 5 months and they are looking at moving more towards best practice. Some schools do have access problems and they have spoken to Head Teachers about congestion. Also, more PTBs do not necessarily mean more cars, as families can look at alternatives, such as car sharing. They cannot push families towards PTBs and they will be bespoke to the family.

- They are trying to make the policy clearer and transparent and they are working towards a more modern contract with both the policy and commissioning working in tandem.
- They are cognisant that there is an increase nationally in demand. Travel Assist is a part of the broader SEND offer and the Written Statement of Action is looking at a range of options, one being more places in the city closer to where the need is. Therefore, they are looking at a holistic offer.
- They can add into the policy that it will feed into the SEND process and the Written Statement of Action.
- Changes to the stage 2 appeals is part of the consultation and this change reflects good practice. The current arrangement was not seen as good practice by the Kerslake Review and the Birmingham Independent Improvement Panel. Also, other local authorities are surprised at the current stage 2 appeals arrangement.
- They are cognisant of the legal challenges on cuts to SEND nationally and since August they have engaged a barrister.
- Travel Assist has received a lot of media attention and they want to get this right.
- They are looking at improving the EHCP process.
- Good practice is to undertake the consultation in 28 working / school days. However, they are looking to undertake this in 32 school days and would welcome any suggestions on additional groups they could consult with.
- The aim is to improve the service and the Acting Corporate Director is more than happy to bring the requested information to scrutiny. Also, Members discussed Travel Assist at their November 2018 committee meeting and the Written Statement of Action was discussed with Rachel O'Connor, Director of Planning & Performance, Birmingham and Solihull CCG in October and they will come back to update the Committee.
- They do not want the service to be procurement driven and they can talk about different options, as mini buses are not the only solution.

The Chair highlighted that Members were still awaiting the risk assessment from the previous call in regarding the Written Statement of Action. The Acting Corporate Director stated they will provide the risk assessments and moving forward it was acknowledged they need to be taken together with the Cabinet reports.

The Cabinet Member is very keen to consult and they want to move to a new commissioning strategy in the Autumn.

Members discussed the request for call-in and it was agreed that the decision would not be called in.

RESOLVED:

That the decision would not be called in and a letter would be sent to the Cabinet Member expressing serious concerns regarding the proposal to change the Stage 2 Appeal Panel from a Members Panel to an Officers Panel and the risk assessment / register is to be forwarded to the Committee.

4. REQUEST(S) FOR CALL IN/COUNCILLOR CALL FOR ACTION/PETITIONS RECEIVED (IF ANY)

No further requests for call in had been received.

5. OTHER URGENT BUSINESS

None.

6. AUTHORITY TO CHAIRMAN AND OFFICERS

RESOLVED:

That in an urgent situation between meetings the Chair, jointly with the relevant Chief Officer, has authority to act on behalf of the Committee.

The meeting ended at 14.15 hours.