

## **Travel Assistance Policy for 0-25 Year Olds in Education**

### **Executive Response to 'Call-In' the decision made by Cabinet on 16 April 2019**

#### **Special Cabinet Meeting - 22 May 2019**

##### **Background**

A report to Cabinet on 16 April 2019 provided details on the outcome of the public consultation on the proposed Travel Assistance Policy for 0-25 year olds in Education.

The report sought Cabinet approval to adopt the Policy attached as Appendix A to the Cabinet report; and introduce the phased implementation as set out in the Cabinet report at section 3.33 for current and new users of transport assistance to education provision.

A request for Call-In was made to the Children's Social Care Overview and Scrutiny (O&S) Committee by Councillors Alex Yip and Debbie Clancy on 23 April 2019.

The Children's Social Care O & S Committee, along with members of the Learning, Culture and Physical Activity O & S Committee considered the request for call-in at its meeting on 2 May 2019. At the meeting the Committee heard from Councillor Kate Booth (Cabinet Member for Children's Well-being), Anne Ainsworth (Assistant Director Skills & Employability), Ian Burgess (Head of Law, Education) and Julia Davey (Interim Head of Service - Education Early Help and Safeguarding). Jennifer Langan (Travel Assist Service Manager) was also in attendance.

The Committee resolved to call-in the decision for reconsideration by Cabinet on 22 May 2019.

##### **Reason for Call-In**

The reason for Call-in was that:

- The Executive appears to have overlooked some relevant consideration in arriving at its decision
- 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 decision appears to give rise to significant legal, financial or propriety issues

##### **The Committee Resolution**

The Committee resolved to call-in the decision for reconsideration by Cabinet, by a unanimous vote, on the grounds that:

- 1. *The Executive appears to have overlooked some relevant consideration in arriving at its decision***
  - a. The adequacy of the length of the consultation period.
  - b. The timings of some of the meetings / stakeholder events with some of these not being suitable for parents and service users.

- c. Scrutiny Members remained concerned that the response from the DfE has not been adequately incorporated or reflected in the policy.
- d. There were concerns that 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.
- e. The report which was submitted to Cabinet was late and had made 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.
- f. 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 a panel of officers will be more independent than the current arrangements.
- g. 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.
- h. Members 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.

**2. *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***

- a. The policy does not include examples or definitions of 'exceptional circumstances', 'discretionary', or 'unsafe routes' which it was felt, will lead to future challenge and further controversy.

**3. *The decision appears to give rise to significant legal, financial or propriety issues***

- a. 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. Concerns were raised that only two of the areas raised in the DfE response were addressed in the final policy. These issues are set out in paragraph 2.2 of the Call-in document and are the same as those mentioned above under 'The Executive appears to have overlooked some relevant consideration in arriving at its decision'.
- b. 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.
- c. Scrutiny Members questioned whether the policy as it stands is legally compliant.

## Comments in Response

As the Cabinet Member I welcomed the opportunity to talk through the policy and consultation at the Call-In meeting. This report seeks to address the specific concerns discussed during the meeting and in the Call-In report.

One of the main themes that was raised by Committee was the need for the Policy to be clear. In response, Birmingham City Council's Education Legal team once more reviewed the policy and two additional adjustments have been made as follows to ensure the Policy reflects the wording within the national statutory guidance:

- Page 4 (Parental involvement section). There was nothing wrong with the original wording but the amendment uses the wording in the national statutory guidance, to put things beyond doubt.
- Page 8. In order to avoid any potential confusion in the section on "home addresses" the previous wording about owned/leased/split residence situations has been removed. The definition of "home address" is now the same as that used in the national statutory guidance.

## Point One

- a. The consultation was undertaken over a period of 28 working days during school term time. During this period there was also a week of school half term, commencing 18<sup>th</sup> February 2019. This is in line with the provisions regarding policy changes contained within the statutory guidance "Home to school travel and transport guidance". This meant that the consultation ran for a total of 45 days. The consultation was not rushed and was undertaken in an orderly fashion.

The consultation included:

- A BeHeard on-line survey (402 respondents)
  - 8 events held at Special Schools for parents across the city (179 attended)
  - Voice of the Child sessions (323 children and young people)
  - Several e-mails were sent to all Councillors and sessions were arranged, which included: 3 separate meetings for Councillors (one with MPs invited); a briefing session with shadow lead members; a Joint meeting of the Children's Social Care O&S and Learning, Culture and Physical Activity O&S committee on 26 March and an offer from the Cabinet Member for Children's wellbeing for individual 1-2-1 sessions for any interested Councillors. Officers were also available before two Full Council meetings to discuss the consultation with councillors.
  - All Statutory stakeholders were contacted
- b. It is not clear on what basis this assertion was made. The consultation team did not receive any complaints regarding the timing of the sessions arranged either during or after the consultation.

The timings of the meetings were set by the host schools. Regard was given to the needs of parents/carers alongside meeting the educational needs of children and young people. Before the consultation started officers were in touch with headteachers at special schools regarding holding sessions for parents. The dates/times were arranged following advice

from the schools hosting the sessions about when and what would work best for their families.

Some sessions were better attended than others. This is to be expected as part of a consultation process. 8 events were held at schools to ensure there was a good opportunity for parents to attend, and additional promotion of events could be undertaken if it was required during the consultation. Ultimately 179 parents attended the events.

- c. It was unfortunate that the DfE response to the consultation was late. However, although the response from the DfE was received outside of the consultation period all the comments made were carefully considered and it has led to changes to the policy. The table attached as an appendix provides more information.
- d. At the start of the consultation it was recognised that there would be a period of two weeks between the end of the consultation and the submission of the Cabinet report and consultation outcomes. This was planned for and consequently it was explained in detail at the Committee meeting that measures had been taken to ensure the results of the consultation were properly analysed and put in place. Information and feedback regarding the consultation was collated and analysed on a weekly basis, with a regular update provided to the Cabinet Member for Children's Well-being throughout the consultation. This was to ensure that there was adequate time to consider the feedback, as this was undertaken on an on-going basis.
- e. It was known that the report on the consultation would be submitted as a late report, when the consultation was launched in February. There was a variety of feedback received throughout the consultation, which reflects the quality of the consultation and the level of work invested in ensuring that the consultation was a comprehensive, transparent and genuine opportunity to engage with stakeholders, and our partners, parents and children.

In order to reflect the transparency of the work, all responses were included in the paperwork submitted to Group Offices prior to the cabinet meeting. Feedback through the BeHeard survey and events held showed that in general, consultees were broadly in agreement with the proposed direction of travel in respect of the policy. This is why, although changes were made, the Policy presented to Cabinet was not substantially different to the draft policy consulted upon.

As reflected in the Cabinet Report, parents felt most strongly about 'practice' and the quality of service delivery. Whilst this is separate from the policy, officers and the Cabinet Member have listened to this feedback and will incorporate changes to service delivery in line with some of the issues raised. This was mentioned in the Cabinet Report, and includes, for example, the introduction of a new Quality Assurance Framework for decision making processes.

- f. The Stage 2 Appeals Committee is the Education Awards (Review) Sub-Committee. This is a sub-committee of the Council Business Management Committee, and performs a non-executive function and is not part of the Scrutiny arrangements.

Councils that have Officers/Professionals on their appeals panel include: Leeds; Coventry; Walsall; Wolverhampton; Manchester; Nottingham and Sheffield.

A pool of professionals will consider Stage 2 appeals, including colleagues from Children's Social Care; Health and Education as appropriate. None of the individuals on the panel will have been previously involved in the original application or Stage 1 appeal. A new Quality Assurance Framework will be introduced to ensure that decisions taken are appropriate; transparent; and regularly audited.

65% of Beheard respondents agreed with the proposal to change the panel, 12% disagreed, 17% neither agreed nor disagreed and 6% didn't know.

- g. Councillors were provided with a significant amount of information regarding the consultation and detail outlining the changes. The policy submitted to cabinet was the proposed final version and therefore did not include tracked changes.
- h. The response from DfE was included in the packs of information delivered to the Group Offices on 15 April 2019 and was available outside the Cabinet meeting on 16 April 2019.

## **Point 2**

- a. It is not a legal requirement to define these words; they have their usual meanings. Exceptional circumstances are determined on a case by case basis and discretion should be exercised reasonably in such cases based on the individual circumstances in question.

The e-mail from DfE did not raise this as a concern, but consideration will be given to the use of case studies and examples on the web pages for the service.

## **Point 3**

- a. The DfE were contacted as a statutory consultee. The DfE were provided with details at the start of the consultation and then again during the consultation to ask for their response. Despite this, unfortunately the response was received outside of the consultation deadline, and was over a week late. Under normal circumstances, in line with consultation requirements, the response would not be taken into account. However, it was felt important that the comments made by DfE were reflected in the final policy presented to Cabinet.

A table is attached which shows the changes that have been made with regards to some of the comments by DfE, and if changes were not made following the e-mail from DfE, why this was the case.

- b. There were changes made to the policy and the table attached outlines what changes were made, and why some suggested changes were not made.
- c. Best practice guidance was used prior to the start of the consultation, with an emphasis on ensuring that the consultation was legally sound, meaningful and transparent. The consultation is legally compliant.

Attached:

- Appendix A – The 0-25 Travel Assistance Policy

- Appendix B – The e-mail sent from the DfE to Birmingham City Council
- Appendix C – A table explaining our response to the points raised