

## **Briefing note to the Education and Vulnerable Children Overview and Scrutiny Committee**

**16<sup>th</sup> March 2016**

**An update about the Education Awards (Review) Sub-Committee regarding *Travel Assist* (previously known as Home to School Transport)**

### **Purpose of Report**

- To provide an update about the Local Authority's future direction for travel assistance to enable access to education for those eligible for provision, including commissioning intentions and how it is linked to the Future Council Programme.
- To clarify the current position regarding the role and function of the Education Awards (Review) Sub-Committee.
- To provide transparent information about the financial impact of decisions taken at appeal hearings.
- To outline short term and longer term options for development in line with the overall strategy.

### **Recommendation**

That the committee note the information in the report

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## Context:

*Travel Assist* (previously known as Home to School Transport) currently provides assistance for approximately 6000 children and young people within Birmingham, of which approximately 4000 have an SEN (Special Educational Need), to support their access to education. The LA is statutorily obliged to provide assistance to those eligible under the Education Act 1996 (Section 508B). The vast majority of pupils without SEN are provided with a bus pass whereas the vast majority of pupils with SEN are provided with specialist transport, in the form of a tailored bus and the provision of pupil guides, to enable access to school.

A strategic approach is developing, through the Future Council Programme, to drive cultural change in the delivery of services to Birmingham citizens. *Travel Assist* has a particularly important role to play in a key outcome: maximising the independence of adults. *Travel Assist* must ensure that they provide opportunities that **empower** our children and families to meet their own needs, use resource already available to them through social capital and their local community and enable young people to be **independent** citizens in the future.

## What outcomes are we trying to achieve?

Collectively we will want to determine what the outcomes and success measures would be but the potential benefits for families and their children are likely to be:

- The best possible level of independence into later life for the child, which might mean better or more appropriate support and potential employment opportunities.
- A more independent family.
- Families with improved knowledge about how the public sector can support them.
- Families with greater understanding about what they can do for themselves.
- Providing families with information about what is available to support them in their local community.
- Promoting personalisation, particularly encouraging and promoting the use of Direct Payments.

## Proposed Commissioning Intentions:

- To move from a paternalistic approach to an independence approach to service delivery. We will not provide a service – we will assist. All children and young people eligible for assistance, in line with policy, will be assessed and reviewed via the personalised commissioning pathways (see page 6).
- To reduce multiple contacts and assessment, through coordination approach and ensuring reviews are managed to reflect the changing needs and circumstances of the child/young person.
- To use an asset based approach to assist the citizen, through partnership working, supporting the development of social capital and enabling citizens to access community, voluntary and faith based services in their local community.

- To, wherever possible, work with the family or young person to develop travel solutions that enable them to access education in the same way that members of their peer group who do not have a special educational need or disability would access their education. This includes travelling independently for young people and family based travel solutions for younger children.

In addition:

- There are significant savings targets proposed against Travel Assist for 16/17 within BCC's budget consultations (£2.463m). This is due to the unprecedented level of cuts to Birmingham City Council's funding from Central Government.
- Over the coming years a new approach to Special Educational Needs and Disabilities will be designed and implemented moving away from a high dependency model. The intention being to give children with special educational needs and their families access to services which enable, rather than build a level of dependency.

### **What is happening now?**

The Travel Assist team have requested resource from the Future Council team to co-produce our new offer, consult and engage with key stakeholders and support the necessary change management that will be essential to realise our ambitions.

Some activity though has already begun. In the short term we plan to:

- Promote personal transport budgets, so that more pupils can change from specialist transport to a direct payment.
- Provide Independent Travel Training to pupils, so that more can change from specialist transport to a bus pass.
- Provide individual programmes to enable more pupils to change from a low occupancy taxi to a seat on a minibus.
- Improve the contractual arrangements with our transport providers that maximise cost effectiveness (as young people move to more independent travel solutions) and include the provision of pupil guides where we have staff vacancies or where we require new routes.
- We are also developing an Adult education transport policy. Some urgent work is being undertaken to develop a written adult education transport policy for learners 19-25 which is a requirement of the Education Act 1996. This written policy gap has come to light following the implementation of the SEN reforms and developing 19-25 agenda for Special Educational Needs. Work with legal services regarding this item is ongoing.
- And finally the team have changed their name to TRAVEL ASSIST in recognition of the way in which the LA intends to enable access to education for those who require and are entitled to a form of assistance.

## **Statutory Guidance on Appeals**

The Statutory Guidance on appeals changed in 2014 and is intended to ensure greater consistency in approach and to be clearer and more transparent for both parents and local authorities. Local authorities should have in place both complaints and appeals procedures for parents to follow should they have cause for complaint about the service, or wish to appeal about the eligibility of their child for travel support. The procedure should be published alongside the local authority travel policy statement. If an appellant considers that there has been a failure to comply with the procedural rules or if there are any other irregularities in the way an appeal was handled they may have a right to refer the matter to the Local Government Ombudsman. If an appellant considers the decision of the independent appeals panel to be flawed on public law grounds, they may apply for a judicial review.

Previous guidance made clear that local authorities should have in place and publish their appeals procedures, but left it to the individual authority to determine how this should operate in practice. DfE now recommend that local authorities adopt the appeals process set out below, appreciating that specifics, such as the identification of an appeal compared to a complaint, will need to be decided by local authorities. The intention is to ensure a consistent approach across all local authorities, and to provide a completely impartial second stage, for those cases that are not resolved at the first stage.

Local authorities should publish annually their appeals process on their website. This should set out a clear and transparent two stage process (with paper copies available on request) for parents who wish to challenge a decision about:

- The transport arrangements offered;
- Their child's eligibility;
- The distance measurement in relation to statutory walking distances; and
- The safety of the route.

### **Stage one: Review by a senior officer**

A parent has 20 working days from receipt of the local authority's home to school transport decision to make a written request asking for a review of the decision. The written request should detail why the parent believes the decision should be reviewed and give details of any personal and/or family circumstances the parent believes should be considered when the decision is reviewed.

Within 20 working days of receipt of the parent's written request a senior officer reviews the original decision and sends the parent a detailed written notification of the outcome of their review, setting out:

- The nature of the decision reached;
- How the review was conducted (including the standard followed e.g. Road Safety GB21);
- Information about other departments and/or agencies that were consulted as part of the process;
- What factors were considered?
- The rationale for the decision reached; and
- Information about how the parent can escalate their case to stage two (if appropriate).

## Stage two: Review by an independent appeal panel

A parent has 20 working days from receipt of the local authority's stage one written decision notification to make a written request to escalate the matter to stage two. Within 40 working days of receipt of the parents request an independent appeal panel considers written and verbal representations from both the parent and officers involved in the case and gives a detailed written notification of the outcome (within 5 working days), setting out:

- The nature of the decision reached;
- How the review was conducted (including the standard followed e.g. Road Safety GB);
- Information about other departments and/or agencies that were consulted as part of the process;
- What factors were considered;
- The rationale for the decision reached; and
- Information about the parent's right to put the matter to the Local Government Ombudsman (see below).

The independent appeal panel members should be independent of the original decision making process (but are not required to be independent of the local authority) and suitably experienced (at the discretion of the local authority), to ensure a balance is achieved between meeting the needs of the parents and the local authority, and that road safety requirements are complied with and no child is placed at unnecessary risk.

Local Government Ombudsman – it is recommended that as part of this process, local authorities make it clear that there is a right of complaint to the Local Government Ombudsman, but only if complainants consider that there was a failure to comply with the procedural rules or if there are any other irregularities in the way the appeal has been handled. If the complainant considers the decision of the independent panel to be flawed on public law grounds, the complainant may also apply for judicial review.

All applications for travel assistance in Birmingham are assessed in-line with current City Council policies. The Council's policy is to provide free school transport to these categories of eligible children in accordance with its legal obligations, but not otherwise unless there are exceptional circumstances.

### **Entitlement to Travel Assistance in Birmingham**

In Birmingham the policy for children of compulsory school age states that travel assistance will be provided for children and young people who attend their nearest qualifying school and the distance between their home address and school is over the statutory walking distance.

The statutory walking distances are:

2 miles for children under 8 years of age

3 miles for children or young people aged 8 or over.

Below these distances the responsibility for the journey to school rests with the parents or carers. The statutory walking distance is measured along a route that a child or young person might reasonably be expected to walk to school accompanied where necessary by their parents or carers.

Where a parent or carer chooses a school for the child or young person but there is a qualifying school nearer to home which he or she could attend then travel assistance is not available under this heading.

#### Low Income Families

“Low income family” means one where the child or young person is entitled to free school meals or where one or both parents are in receipt of the maximum level of working tax credit.

Children or young people in such families who do not qualify for travel assistance under the criteria above are nonetheless entitled to travel assistance if they satisfy the following criteria:

#### Primary Aged Children:

Children aged between 8 and 11 years of age from low income families are entitled to free travel assistance where they are attending their nearest qualifying school and that school is more than 2 miles from their home.

#### Secondary Aged Children and Young People:

Children and young people aged 11-16 (in year groups 7 to 11) from low income families are entitled to free travel assistance if they are attending a school more than 2 miles but not more than 6 miles from the home address and it is one of the three nearest suitable qualifying schools from their home. This distance is extended to 15 miles if the parents or carers have selected the nearest qualifying school based on their religion or belief and, having regard to the

#### Children and Young People with Special Educational Needs

Children and young people who do not qualify for travel assistance above are nonetheless entitled to travel assistance if they are attending the nearest qualifying school to their home which is suitable for their needs but have special educational needs, a disability or mobility problem and for this reason cannot reasonably be expected to walk to that school.

Travel assistance will not normally be given where the parents or carers have requested that a school be named in the child's or young person's statement of special educational needs (SEN) which is not the nearest available school able to meet the individual's needs.

Where a child has a statement of special educational needs or significant special educational needs but is below compulsory school age, applications for travel assistance will be considered under this heading as a matter of discretion.

Decisions will be based upon information regarding the child or young person in relation to clear medical/specialist advice, evidence of need and parental circumstances.

#### **The Appeal Process in Birmingham, including the Education Awards (Review) Sub-Committee**

If an application for travel assistance is not approved by the Council, or the parents or carers disagrees with the type of assistance offered, there is a right of appeal. In Birmingham at stage 1 a children's service manager will consider the appeal. If the parent or carer remains dissatisfied with the outcome then they are able to move to stage 2. The appeal is then reviewed by the Education Awards (Review) Sub-Committee which is made up of 5 elected members of the Council and an outcome is reached. There is further opportunity under the Education Act 1996 to complain about these matters to the Secretary of State for Education should the parent continue to be unsatisfied.

The function of the appeals process at each stage is to ensure that decisions made are in line with localised policy. Where decisions to approve assistance are made outside of policy there is a need for clear, transparent decision making that qualifies what is exceptional about a particular application for assistance and therefore makes it appropriate to approve. Whilst the statutory guidance provides that local authorities should have in place and publish their appeals procedures, intelligence suggests that there is mixed practice with regard to the make-up of panel members at the stage 2 appeal. Whilst elected members form the panel in some Local Authorities, as in Birmingham, the majority appear to adopt an independent body made up of senior officers within the LA not linked to the Travel Team.

### **Some statistics**

During 15/16 1367 applications were made to Travel Assist for specialist transport. Of those 75% (1029) were approved in line with policy and 25% (338) rejected. Of those rejected 52% (175) appealed. Of those that appealed 60% (105) were upheld by officers at stage 1 and 40% dismissed. Of those that were dismissed at stage 1, 90% (63) were submitted to stage 2. Of those that appealed at stage 2, 89% (56) were upheld in favour of parent and 11% (7) were dismissed.






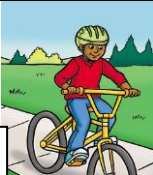











During 15/16 3346 applications were made to Travel Assist for non-specialist travel assistance (i.e. bus passes). Of those 24% (812) were approved in line with policy and 76% (2534) rejected. Of those rejected 20% (518) appealed. Of those that appealed 30% (156) were upheld by officers at stage 1 and 70% (362) dismissed. Of those that were dismissed at stage 1, 21% (77) were submitted to stage 2. Of those that appealed at stage 2, 56% (43) were upheld in favour of parent and 44% (34) were dismissed.

In terms of cost, £122,947.21 for specialist transport and £11,848.50 for non-specialist travel assistance was funded following decisions made at stage 2 for exceptional reasons (Total £134,795.71) during 15/16. This funding had not been accounted for, as approval has been awarded outside of funded policy.














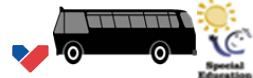







### **Moving forward**

The budget consultation referred to proposed changes to the appeals process. The independent Improvement Panel has also indicated expectations about Members and appeals committees. Consideration is therefore being given to changing the 2<sup>nd</sup> Stage appeal process so it is independent or carried out by senior officers separate from those making decisions about travel assistance. This would be in line with the majority of other Local Authorities and is allowed within the guidance.

As a supportive measure legal representation has recently been provided at The Education Awards (Review) Sub-Committee to offer advice, where required, to support decision making. Officer representation from the Travel Assist team is also present to assist the appeal panel in understanding the meaning of the policy (should it be needed). Whilst there will be a longer term evaluation of the impact of legal support it is worth noting that in the previous 2 committee meetings (where legal representation has been present), appeals upheld were at 35% which is a comparison to 77% pre legal representation during 15/16.

Assessment/Review	School entry		Opportunity to review pathway at any time					Secondary placement	Opportunity to review pathway at any time					6 <sup>th</sup> Form	Opportunity for review	
School Year	YR R	YR1	YR 2	YR 3	YR 4	YR 5	YR 6	YR 7	YR 8	YR 9	YR 10	YR 11	YR 12	YR 13		
<b>Travel pathway 1</b>  Local school, strong family support.	<div>PATHWAY IDENTIFIED IN PARTNERSHIP WITH PARENT</div> <div></div>							<div>Automatic Review of PATHWAY towards independence</div> <div><div>Bike training and funding</div></div>		 		<div>Automatic Review of PATHWAY – towards</div> <div></div>				
<b>Health &amp; Wellbeing indicator</b>	Access to education and the security of the family during primary years, exercise, social skills							Independence, social skills, exercise		Independence, improved self-esteem, exercise		Independence, social skills, exercise				
<b>Travel pathway 2</b>  Family focused solution, school at a distance	<div> Parent/carer (PTB)</div>							<div></div>				<div></div>				
<b>Health &amp; Wellbeing indicator</b>	Access to education and the security of the family during primary years, social skills							More independent, social skills		More independent, social skills		Independence improved self-esteem				



<b>Travel pathway 3</b> Working towards independence	  			  <div>ITT</div> 			
<b>Health &amp; Wellbeing indicator</b>	Access to education			Access to education		More independent, improved self esteem	More independent, improved self esteem
<b>Travel pathway 4</b> Complete travel solution required	  			  		 	
<b>Health &amp; Wellbeing indicator</b>	Access to education					Access to education	
<b>Picture Key</b>	 Access to Special Education	 Family involvement	 Personal Transport Budget (PTB)	 Specialised vehicles provided on contract	 School bus – budget held and provision arranged		
		<div>ITT</div> Independent Travel Training				West Midlands public transport (bus/rail)	