

Meeting of the Cabinet - 15th December 2021

Report of the Director of Children's Services

Home to School Transport Policy

Purpose

1. To detail the changes being proposed to Dudley Metropolitan Borough Council's (the Council) approach to, and policy on the provision of Home to School Transport Support to children and young people, with a specific focus on: -
 - Increasing the independence of pupils and students
 - Ensuring that the transport support provided for eligible children and young people of compulsory school age, i.e. between 5 and 16 years, by the Council's policy does not exceed the statutory minimum
 - Rationalising the Council's Home to School Transport Appeals process; and
 - Achieving efficiency savings / use of available resources
2. To provide Cabinet with background information about Home to School Transport Support nationally and in this area over the past 3 years, as well as how the proposed changes align with the Council's wider Special Educational Needs and Disability (SEND) approach in Dudley.

Recommendations

3. It is recommended that Cabinet: -
 - Consider the information contained within this report about the proposed changes;
 - Authorise the Director of Children's Services to organise and conduct statutory consultation on those proposals

Background

4. Home to School Transport is one of the administration priorities with a focus on equality of access / use of resources and alignment with both the SEND Strategy and Forging a Future 2030 principles.

The Council currently provides transport and travel support for over 1000 children and young people's journeys from home to school or college.

In addition, transport and travel support is provided on a planned and ad-hoc basis to '*looked after children*' and adults for social care reasons, such as contact visits and hospital visits.

The Council's Travel and Transport (T&T) Team sits within the Integrated Commissioning HUB and is responsible for the management of the contracts with taxis, via the commissioned framework, which was tendered in 2019.

For 2020 / 2021, there was a budget build for Transport, in light of the increased demand and pressure on the service, aligned to the growth in SEND placements and the failure to achieve previous savings targets.

A Medium-Term Financial Strategy (MTFS) is in place for 2021/22 of £220k.

It should be noted that the Integrated Commissioning HUB and Accountancy colleagues submitted bids for Department for Environment (DFE) grants (administered by West Midlands Combined Authority (WMCA) during COVID-19 and have successfully received £0.242m for the first quarter of 2021/22.

2018 to March 2020 programme

5. The Council engaged an organisation called Edge Solutions to deliver significant savings on Transport Services (as a whole) with a primary focus on Home to School Transport.

The Edge team focussed on 4 initial areas: -

- a) Tendering of all Home to School Transport routes (April 2019 and September 2019)
- b) Transport Policy revision
- c) Children's Social Care authorisation processes; and
- d) Adult Social Care re-negotiation of contract.

Programme achievements

6.
 - Savings on comparable routes as part of tender (c£400k equivalent)
 - Re-negotiation of Adult Transport contract / provider to deliver saving (£100k)
 - Processes and savings on Children's Social Care transport routes (achievement of savings target within Children and Young People (CYP) Social Care as part of separate but linked MTFS)

Edge Solutions are no longer working with the Council.

The Adult Transport contract has since ceased realising a full saving against the contract (further £180k).

New programme

7. Following discussions between Councillors and Senior Officers, a number of key stakeholders across the Council have completed a piece of work that involved focussing on a range of areas of potential progress in order to:
 - a) Improve the processes in place for managing the demand
 - b) Deliver efficiencies / savings within Home to School Transport

Current Transport Policy

8. The current Transport Policy has been in place since 2019, when it was slightly revised in an attempt to make it clearer.

The Council's Transport Policy has been tweaked recently to provide a level of robustness to the current criteria. The revised Review Process, which involved the introduction of the Service Director for Early Help / Schools and SEND, has enabled challenges to home to school transport decisions to receive appropriate scrutiny.

In relation to entitlement to home to school transport support for post-16 and post-19 students, the current policy states that (extracts taken from the current policy): -

Specifically, for students aged 16-18 with an Education Health Care Plan (EHCP).

Applications for travel support for 16-18 learners with an EHCP are considered on their own terms.

Factors taken into account include: -

- *Whether students live within 3 miles of their suitable education provision and can be reasonably expected to walk this distance.*
- *Whether they are able to access public transport*
- *Whether they have access to a Motability vehicle or family car,*
- *Whether due to their disability they require a specialist vehicle*



Where travel support is provided a contribution will be required of £500 per academic year (£300 for low income families)

9. **Post 19 Travel Support**

Students aged 19-25 with an EHCP are not automatically entitled to free travel support under the law.

Applications are considered under their own terms and will be assessed as part of a social care needs assessment as they move into adulthood.

Factors that will be taken into account include: -

- Whether students live within 3 miles of their suitable education provision and can be reasonably expected to walk this distance.*
- Whether they are able to access public transport (and/or able to do so following independent travel training)*
- Whether they have access to a Motability vehicle or family car,*
- Whether due to their disability they require a specialist vehicle*
- Whether they are eligible under the Care Act as an assessed need*

In applying the current policy, a number of decisions have been overturned by the Members Appeals Committee. Whilst some of these decisions were due to additional evidence being presented at the appeal, others were based on interpretation of the policy and / or the Committee's views of the individual situation.

10. **Explicit removal of non-statutory transport**

Local authorities are entitled to provide home to school transport support for students aged 16 and over or those under the age of 5. i.e. within nursery settings, if they deem it necessary, but they do not have a statutory duty to make such arrangements.

Currently the Council funds 106 students with post 16 and post 19 transport arrangements which amounts to **£0.851m** (information correct as at September 2021 routes).

The Council also funds 25 children for children under the age of 5 within nursery settings which amounts to **£0.153m** (information correct as at September 2021 routes).

To align with DMBC School admissions policy of 4+ travel support would still be eligible for this cohort:

Area	Number of Children (current)	Number of new starters (baseline number this year)	Cost per year
Pre-school age	30	29	£0.14m*
Post 16	66	54	£0.58m*
Post 19	24	17	£0.11m*

** Note - spend relates to new starters

A number of local authorities only provide statutory services for Transport. However, where local authorities have sought to change their policies in line with the Council's proposed approach they have been met with legal challenges from children, young people, parents and other stakeholders, especially in relation to the rights children and young people with disabilities.

Examples / case summaries

- (a) Young person aged 17 attends a Dudley Special School and lives 2.1 miles from the school. Application states that he is unable to use public transport as he is vulnerable and parent says that they are unable to transport child to school due to work commitment. Cost of place on transport £25 per day = £4750 per annum.
- (b) Taxi transporting 3 children (aged between 3 and 4 years) to a specialist nursery for ASD assessment. Cost of route with 3 children is £90 per day = £13680 per annum.
- (c) Young person aged 17 attending Dudley College and lives over 3 miles from the college. The Travel support application states that he is unable to access public transport due to anxiety. Place on transport costs £20 per day = £3,800 per annum.

Key considerations

11. Following discussions with colleagues in Law and Governance, there are a number of areas that require careful and measured consideration. This paper highlights how the proposed changes will address these areas:

A. Rationale for changes to the policy:

The Council must ensure that there are legitimate reasons for why it is no longer necessary or appropriate to fund transport for the circumstances of children and young people that fall outside the statutory minimum, citing the absence of a legal duty and the Council's budgetary concerns are not, on their own, strong or valid reasons.

Response:

The Council has a clear plan as part of the SEND programme; this new SEND strategy has been developed with a clear focus on: -

- Promoting independence for all of our young people
- Preparing children for adulthood and independent living
- Children and young people being part of their local communities
- Supporting children to access mainstream support / life choices.

The proposed changes to the Transport policy fully support the above principles and are consistent with this approach.

The current pressure on the Home to School transport budget and increase in demand / likely demand in line with the Council's inclusion strategy will present further pressure. There is a need for Dudley to demonstrate effective, efficient and fair use of resources.

For those young people accessing post 16 / college, the Council's approach to inclusion and maximising independence will mean that an increased focus on: -

- Independent travel training where possible at an early age stage;
- Introducing pick up and drop off points as part of school age transport; and
- A move towards a travel solution model including the use of other transport options in the Borough

B. Substantive changes require extensive examination:

The changes being proposed are substantive because they are likely to have a fundamental impact on the entitlement to home to school transport support of a number of children, young people and families in the Borough. Therefore, the Council must be able to provide evidence to demonstrate the grounds that necessitate the changes and that the appropriate procedures were followed when determining and implementing such changes.

Response:

As these are substantive changes the Council will need to be able to prove that it has considered sufficient qualitative and quantitative information about its duties, the effect that any changes may have and the procedures, internal and external, that must be followed to enable such a proposal to be approved and implemented.

It is therefore essential that an extensive consultation process be undertaken, which is both wide in its approach and substantial in its coverage including all stakeholders; the type of consultation process intended is described below.



C. What options have been considered

The Council must, as part of its decision making, identify and specify the relevant other options that have been considered and why the eventual proposal was preferred, whilst the others were discarded.

Response

The Council have considered many options as part of this programme and will be able to summarise them, but the options that are still relevant and that are being progressed, include: -

- Independent Travel Training – this is being further developed as part of the Transport Programme
- Introduction of a revamped service model moving from Home to School transport to Travel Assistance with a focus on Pick up and drop off points concept (only those children who require Home to School pick up / drop off will have this service available to them) – this is being developed for 2022/23 onwards as part of the re-modelled Transport service but has been discarded as an immediate action / response due to the nature of change required
- Single routes programme – this has been in situ for September 2021 and the new routes for the academic year

D. When and how can this change be implemented

If approved, the Council would need to ensure that transitional arrangements are in place to minimise the impact of those proposed changes on the children and young people already receiving transport support.

Response

Any change will only be implemented for those children and young people who: -

- Are not currently in receipt of a transport service; or
- Change their educational placement after any changes have been implemented, (i.e. who attend a different school / college to their current placement)

The proposed start of these changes is September 2022 to permit an extensive consultation process to be followed and recipients to be advised of the effect of those changes prior to the start of a new academic school year.

Those children currently in receipt of transport provision under the current policy will therefore receive transitional protection and their entitlement to transport funding will not be affected by the any changes to the policy.



Consultation process

12. An extensive consultation programme is being scoped with key features and timelines detailed below: -

Initial communication sent out prior to Cabinet in December 2021 regarding the specific proposed programme. This communication should be wide ranging but does not need to be the start of the consultation process.

Focussed consultation process for a period of at least 28 working days (excluding school holidays) starting in **January 2021**. Consultees will include, but are not limited to: -

- Children and young people across all schools, including those at Special Schools
- The parents and carers of children and young people currently receiving transport provision and those who may wish to claim it in the future Parent / Carer Forum (PCF)
- All schools with pupils and students who are likely to be affected, including those in adjacent local authorities' areas and Special Schools
- All colleges and educational institutions, including those in adjacent local authorities' areas and Independent Providers
- Local authorities in areas adjacent to the Council
- Local professionals across the Education / Health and Social Care system and those working in public services adjacent to the Council

Due to the subject matter, it is proposed that the consultation period is extended to **90 working days** starting in January 2022 through to mid-March 2022.

Communication Strategy

13. As detailed above and through previous updates to Informal Cabinet, there are likely to be a number of challenges to the Council's proposal via the Corporate Complaints - Policy, the Local Government and Social Care Ombudsman, the courts, etc., which will provide negative publicity. This will be picked up by the Local Press (potentially gather some national coverage through SEND groups / Children's Forums and DfE / OFSTED).

A clear communication strategy will be developed as part of the consultation process in conjunction with the Council's Communication and Public Affairs (CAPA) which will ensure that: -

- The programme is communicated widely and consistently
- Members are supported with key facts and rationale for the proposed changes



Use of existing forums and relationships with stakeholders will be key in delivering messages with extensive engagement avenues already developed through the SEND Improvement Programme.

Proposed changes to the Appeals process

14. The 'Home to school travel and transport guidance' published by the DfE states that:
- Local authorities should publish alongside their home to school transport policy statement, a complaints and appeals process (paragraph 54);
 - The appeals process should consist of two stages (Annex 2):
 - Stage One: Review by a senior officer; and
 - Stage Two: Review by an independent appeal panel;
- AND
- Although the independent appeal panel members should be independent of the original decision-making process, they are not required to be independent of the local authority.

Whilst paragraph 38 of the 'Post-16 transport and travel support to education and training guidance', which is also published by the DfE, adds that:

*“Local authorities should publish **as part of the transport policy statement** [emphasis added] the process which will be followed should a complaint or an appeal against a local authority decision ... Good practice suggests using a similar 2 stage complaints process as that used for pre 16 appeals ...”*

As a result, following an exercise to establish neighbouring local authority appeals panel arrangements through the ATCO (Association of Transport Co-ordinating Officers) group it is proposed that the Council changes its current appeals process / mechanism for Home to School Transport.

The Council's current appeals arrangements consist of the Appeals Committee (the same Committee that hears employee dismissal appeals). This Committee is administered by Democratic Services.

The majority of local authorities across the region do not operate Member appeal panels for transport decisions, but instead utilise a range of other options to ensure that it complies with their legal obligations to ensure that an independent appeals process is in place.

These options include: -



- a) A senior officer(s) from within a different part of the Council (e.g. different Directorate)
- b) Officers from other transport departments (e.g. fleet services)
- c) Former transport experts (e.g. retired former officers)
- d) Potential reciprocal arrangements with another local authority to hear each other's appeals (officers)

Whilst each option has its merit it is proposed that **option a** (officers from different Directorates) is progressed and implemented in Dudley.

The proposed Transport Appeals Panel would consist of a nominated Senior Officer with representation from Law and Governance. Meetings will be held on a monthly basis.

Proposed changes to the Appeals process will be effective from September 2022 in line with the proposed Transport Policy changes if approved.

Finance

15. The 2021/22 Home to School budget is currently £4.876m, which includes an in-year MTFS savings target of £0.220m.

There continues to be pressures on non-statutory transport provision for children attending nursery and Post 16 provision. This policy change is anticipated to help mitigate this growing trend.

Law

16. Local authorities are required to comply with the law and, in the case of home to school transport, that law is:
 - (a) supplied by legislation, such as the Education Act 1996
 - (b) interpreted in the courts by judges; and
 - (c) summarised in '*The Home to School Travel & Transport Guidance*', published by the Department for Education.

17. In summary, the legislation states that a local authority:

- Has a statutory duty to make the travel arrangements that it:

"...considers necessary in order to ... [facilitate an eligible] ... child's attendance at the relevant educational establishment ... free of charge ..."

Section 508B of the Education Act 1996



22. Therefore, the Cabinet is entitled approve this request that Dudley Metropolitan Borough Council consult on the proposals outlined in this report, once its members:
- (i) Have considered the information provided in the report, its associated documents and by officers; and
 - (ii) Are satisfied that the procedures followed and the changes being proposed comply with the Council's Constitution and the law.

Equality Impact

23. An Equality Impact Assessment (EIA) forms part of the appendices to this report. The EIA highlights those potential residents in the future where the Council's decision will have an adverse impact. The impact focusses solely on pre-school (under 5's) and post 16 children / students.

Human Resources/Organisational Development

24. There are no Human Resources / Organisational Development implications as part of this report / project.

Commercial/Procurement

25. All contracts and commercial agreements associated with this will be let and managed in accordance with the Contract Standing Orders of the Authority"

Risk Management

26. The proposed programme will adhere to the local authorities' policies and procedures. The proposed changes to the Transport policy will have the potential to create reputational damage to the Council; however, a robust and extensive consultation process with stakeholders will support any final decision with pro-active communication in place.

Council Priorities

27. *The programme works towards supporting a more inclusive approach for Dudley's young people through a model that promotes independence and prepares residents for adulthood to maximise their life skills and chances.*
28. *Supporting the use of local transport networks for young people will also work towards enabling young people to be part of their local community and establishing relationships.*
29. *The programme also contributes towards the Council's financial position, providing an equitable level of support to people within a finite resource envelope.*
30. *The promotion of independent travel training will also support young people to be more physically active on a day to day basis.*

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Appendices

Appendix 1 - Proposed Transport Policy
Appendix 2 - Post 16 Transport Statement
Appendix 3 – Equality Impact Assessment (EIA)