

Classification: Open	Decision Type: Key
--------------------------------	------------------------------

Report to:	Cabinet	Date: 15 February 2023
Subject:	SEND Transport/Travel Assistance – post-19 provision for young people with an Education Health and Care Plan	
Report of	Cabinet Member for Children and Young People	

1.0 Summary

- 1.1 Local authorities are placed under a statutory duty to facilitate access to education for children and young people with Special Educational Needs and disabilities.
- 1.2 This duty is fulfilled through the provision of transport or travel assistance, in a number of ways.
- 1.3 The Council has an agreed policy that sets out these arrangements.
- 1.4 Following an investigation by the Local Government Ombudsman, the Council was found to need to review its post 19 transport/travel assistance. The LGO is of the view that the Council’s policy in respect of those learners aged 19 and above was not statutorily compliant in that it did not consider this young person's circumstances in relation to transport when the EHC was reviewed and the placement offered.
- 1.5 The purpose of this report is to set out the measures that the Council is taking to ensure that the policy is both legally compliant and continues to meet the needs of those young people who require support in accordance with the statutory duty.
- 1.6 This report looks only at the policy as it applies to post 19 learners. Consultation on changes to the broader policy as it affects those children and young people of statutory school age, and post 16 learners, will be presented to Cabinet at a later date.

2. Recommendation(s)

That:

- 5.2 Cabinet note that following the LGO findings, the Council has committed to review its current policy for transport and travel assistance as it affects post 19 learners. In advance of the review of the full transport policy, the local authority has made changes to the post 19 arrangements and has published an updated statement on the Council’s website.

Reasons for recommendation(s)

The LGO has requested confirmation that the Council is aware of the outcome of its investigation, and of the measures taken in response.

Alternative options considered and rejected

Following the LGO findings there was an immediate need to review the policy and publish updated arrangements. No alternative options were considered.

3. Background

- 3.1 Under the Education Act 1996 (as amended by the Education and Inspections Act 2006), local authorities have a duty in certain circumstances to make such travel arrangements as they consider necessary in order to ensure that suitable home to school travel arrangements are made for the purpose of facilitating a child's attendance at relevant educational establishments for children below 6th form age.
- 3.2 Local Authorities have a duty to facilitate access to full-time education for all young people aged 16 -18 years and those continuing learners who started their programme of learning before their 19th birthday, and this may include assistance with travel in certain circumstances.
- 3.3 Local authorities do not necessarily have to provide free or subsidised post 16 travel assistance but do have a duty to prepare and publish an annual transport policy statement outlining the arrangements for the provision of travel or assistance that the authority considers necessary to facilitate the attendance of young people attending sixth form education or training.
- 3.4 Local authorities are under a duty by virtue of the Education and Skills Act 2008 to encourage, enable and assist participation of learners with learning difficulties in education and learning. In some cases this will include young people up to the age of 25 subject to an individual assessment of need.
- 3.5 In line with the Children and Families Act 2014, and as part of the SEND reforms, it is expected that young people will work towards independence from the earliest opportunity, both at home and through their educational placement. The majority of young people who will attend college will be able to travel independently and for those who cannot, opportunities for this to take place should be maximised, through a range of providers.
- 3.6 Unless there is an individual assessment of need for assistance with travel the responsibility for travel to and from college rests with the young person and their family.

- 3.7 Local authorities also have a duty with regard to transport or travel for adult learners. The purpose is to ensure that those with the most severe disabilities, and with no other means of transportation are able to undertake further education and training after their 19th birthday to help them move towards more independent living.
- 3.8 Following an investigation by the Local Government Ombudsman, the Council was found to need to review its post 19 transport/travel assistance as it affected the complainant. The LGO is of the view that the Council's policy in respect of those learners aged 19 and above is not legally compliant.
- 3.9 An adult learner is a person who starts a course of study **after** their 19th birthday. If they are a 'relevant young adult', they will have an Education, Health and Care plan.
- 3.10 Local authorities must make arrangements for the provision of transport or travel assistance, as they consider necessary, in respect of:
- 3.10.1 Adults who are aged 19 or over, to facilitate their attendance at further or higher educational institutions (FE and HE, where they are maintained or assisted by the local authority) or institutions within the further education sector (FE).
- 3.10.2 Relevant young adults (i.e. those with an Education Health and Care plan that can be maintained up to the age of 25) receiving education or training at institutions outside both the further and higher education sectors. For these young adults, support is only provided where the local authority has secured the provision of education or training at those institutions and the provision of boarding accommodation that is linked to that education or training.
- 3.11 In making that decision on whether transport provision is necessary, the Council will take account of the relevant circumstances, including the age of the adult, the nature of the route which the adult could reasonably be expected to take and their ability to travel independently. Case law says that, in deciding what necessary, local authorities "must exercise their judgment judiciously and in good faith".
- 3.12 If local authorities *do* consider it necessary to make such travel arrangements, then any transport provided must be provided free of charge.
- 3.13 Even if the local authority *does not* consider it necessary to make arrangements to provide free transport to adult learners receiving education or training at the institutions mentioned above, they have a discretion to pay some or all of the reasonable travelling expenses if no other arrangements have been made.

4. The Local Government Ombudsman findings

4.1 The Local Government ombudsman investigated a complaint made on behalf of an adult learner. Its findings in summary were:

4.1.1 When naming a post-19 setting in an EHC Plan, ensure it properly considers whether the placement is appropriate and suitable and ensures the individual and/or their family are made aware of the Council's transport policy and the likelihood of the provision of transport. This should allow them to make informed decisions.

4.1.2 The law sets out a statutory duty for councils to provide free transport to relevant young adults aged 19 or over where they decide it is necessary to do so to facilitate their attendance. In this case, the Council refused the application for transport to college on the basis that the learner was over 18. It failed to consider the requirements of s508F of the Education Act, that the learner had an EHC Plan and was a relevant young adult. This was fault.

4.1.3 The Council has a separate and distinct duty to make such arrangements as they consider necessary in respect of relevant young adults with an EHC plan for the purpose of facilitating their attendance. The Council failed to decide whether it considers it 'necessary' for the learner to receive travel support to facilitate his attendance at college. The question of what is necessary is a matter for the Council, in deciding that question they must exercise their judgment judiciously and in good faith". In this instance, there was no evidence to show that consideration.

4.1.4 The Council was made aware that the learner was looking to go to college, and it agreed to name the college in the EHC Plan and did so. There was no evidence the Council discussed with the learner or parents that transport would not be provided to college. The Council did not give them sufficient information to make an informed decision.

4.1.5 The Council's policy fails to clearly set out its statutory duty to provide free transport if it is necessary for adult learners with an EHC Plan.

5.0 Response

5.1 The local authority has reviewed the current arrangements and has committed to reviewing its current policy for SEND transport and travel assistance, encompassing statutory school age, post 16 and post 19.

5.2 In advance of the review of the full policy, the local authority has made changes to the post 19 arrangements and has published an updated statement on the Council's website.

5.3 The local authority has updated guidance has been produced for use by the local authority EHCP Plan Assessment Team, and School & College Transport Team, to ensure a clear and consistent approach, including the advice given to parents within the Education Health Care Plan assessment process.

5.4 Consultation with Bury2gether (parents Forum) on the changes applicable in respect of post 19, and the intention to consult on the broader SEND transport & travel assistance policy

6.0 Conclusion

6.1 Following the LGO judgement, the Council has committed to review its current policy for transport and travel assistance as it affects post 19 learners.

6.2 The LGO has requested confirmation that the Council is aware of the outcome of its investigation, and of the measures taken in response.

6.2 This report sets out the measures that the local authority has taken in response

Report Author and Contact Details:

Name: Paul Cooke

Position: Strategic Lead (Education Services)

Departments: Children's Services

E-mail: p.cooke@bury.gov.uk

Links with the Corporate Priorities:

- The report is key to a better future for the children of the borough, a better future for the children of the borough and a fairer society that leaves no-one behind

Equality Impact and Considerations:

It is proposed that a full review of the SEN transport policy is undertaken. A full Equality Impact Assessment will be taken at this time.

Environmental Impact and Considerations:

Not applicable to this report.

Assessment and Mitigation of Risk:

Risk / opportunity	Mitigation
Impact on stakeholders	Full consultation and engagement Equality Assessment

Fairer, clearer system for the majority of families	Full consultation with co-production on a review of SEN transport policies.
---	---

Legal Implications:

The Local Government Ombudsman has found that the Council has failed to consider a requirement of S508F of the Education Act when undertaking an Education care and Health Plan. The report sets out the Council’s response to these findings, Members are asked to note that there will be a full review of the transport policy.

Financial Implications:

The Council currently holds a budget for school and educational transport that is overspent in 2022/23 as the number of young people accessing transport to their educational establishment exceeds that which the original budget provided for. This paper and the outcome of the ombudsman review identifies there is a need to review the Councils current policy which may or may not have an impact on the current spend and the current budget but this is not known at this time.

Background papers:

None.

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning
EHCP	Education Health and Care Plan
SEND	Special Education Needs and Disabilities