

Committee: Cabinet

Date: 8 November 2021

Agenda item:

Wards: All Wards

Subject: Home to School/College Travel Assistance

Lead officer: Jane McSherry - Director of Children, Schools & Families

Lead member: Cllr Eleanor Stringer – Joint Deputy Leader and Cabinet Member for Children and Education

Contact Officer: Tom Procter, Head of Contracts and School Organisation

Recommendations:

- A. To agree to commence a consultation as outlined in this paper to consider changes to the council's Home to School/College Travel Assistance policy for providing travel support from September 2022, and particularly the discretionary policy.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The purpose of this report is to seek the approval of Cabinet to commence a consultation for changes to the council's home to school and home to college travel assistance policy, which is primarily for children with SEND (special educational needs and disabilities).
- 1.2. This consultation was initially proposed as part of the savings proposals approved by Budget Council in March 2020, but was delayed due to Covid.
- 1.3. The report sets out the difference between statutory and discretionary support, the current pressures on the council including from the DfE as part of their intervention with the council with regards to SEND spending, and the options in the consultation.
- 1.4. A report will be provided for Cabinet after this consultation.

2 DETAILS

- 2.1. Local Authorities have a statutory responsibility to make transport arrangements for all eligible children. These are children of compulsory school age (5-16) if their nearest suitable school is beyond 2 miles (if below the age of 8); or beyond 3 miles (if aged between 8 and 16), or all children who cannot reasonably be expected to walk to school because of their mobility problems or because of associated health and safety issues related to their special educational needs (SEN or disability (Section 508B of the Education Act 1996)).
- 2.2. Local authorities have discretionary powers to go beyond their statutory duties and provide transport for children who are not entitled to free transport (e.g.

children attending a school nursery or post-16 provision) but there is no legal requirement (Section 508C(1) of the Education Act 1996). The only legal requirement is to publish the discretionary policy.

- 2.3. In relation to pupils of sixth form age and students continuing a course started before the age of 19, there is a duty to prepare and publish an annual transport policy statement specifying the arrangements that the authority considers necessary to make to facilitate attendance (section 509AA of the Education Act 1996).
- 2.4. Local authorities also have a limited duty to make transport arrangements where necessary for students aged 19 to 25 with EHCPs in residential education or attending further education colleges and must publish an annual policy statement (sections 508F and 508G of the Education Act 1996).
- 2.5. Since free travel is available on London buses for school children, support is rarely required except for children with mobility issues or SEND.
- 2.6. Merton Council has not formally reviewed its home to school travel assistance policy for a number of years and in this time expenditure has increased considerably year-on-year to over £6.5 million per annum. The only exception has been in 2020/21 due to Covid related school closure periods. This is in line with a more than doubling in the number EHCPs (Education, Health and Care Plans) over the past five years, and the high number of provisions transported to. Therefore in March 2020 Budget Council agreed “to review eligibility for SEND home to school/college travel assistance, in particular for post-16 students, subject to recommendations from the appointed consultant on home to school transport efficiencies”. Due to Covid this has been delayed.
- 2.7. National comparative data from our Section 251 return (Education budget statement) shows that for pre-16 transport expenditure, at £166 per capita in 2020, Merton was the third highest budget per capita in England, which is likely to be partially driven by out-of-borough special school placements. This was an increase from £146 in 2019.

Merton also spends a considerable sum on discretionary transport, with the table below summarising the support provided:

EXPENDITURE BASED ON AN ANNUAL SPEND CALCULATION OF ROUTES COMMISSIONED IN JULY 2021	£	Number
Pre-school SEND	115,000	6 children
Post 16 SEND (taxis and minibus)	963,400	73 students
Post 16 SEND with Travel Budgets	33,000	6 students
	1,110,000	85 in total

- 2.8. The Council is significantly overspending on its High Needs Block DSG (Dedicated Schools Grant). The DfE (Department for Education) has recently invited Merton to participate in the second round of their ‘safety valve’ intervention programme with the aim of agreeing a package of reform to the high needs system that aims to bring the DSG deficit under control. The expectation is that the council looks at all areas of spend on SEND, including those currently met from the general fund, and to make reductions wherever possible.

- 2.9. The council discretionary policy outlines that the local authority expects that the majority of young people with special educational needs or disabilities will travel independently to school, college or other training provisions, apprenticeships and traineeships and that they will use the concessionary fares, discounts and passes available to all young people but that travel assistance will be provided when “there is clear evidence that the young person’s disability is such that they are unable to travel independently or to do so would result in undue stress for the young person.”
- 2.10. Our research has shown that Merton’s policy offers more assistance than other council areas:
- Wandsworth say they restrict organised transport to only severe/complex learning difficulties for post 16
 - Croydon’s default offer is that of a personal travel budget
 - Sutton’s travel offer is of mileage reimbursement, an escort/travel buddy, travel training assessment, seat on a private bus from a pick point and in ‘exceptional circumstances’, transport by taxi or licensed private hire.
 - Kingston’s travel policy makes no mention of buses or taxis
 - Surrey have already introduced charges
 - Other authorities do not provide organised transport to mainstream settings or provide passenger assistants (escorts).
- 2.11. It is therefore proposed to consult on a range of options for pre-school and post-16 children and young people to ensure that our transport policy is cost-efficient but appropriate to the needs of young people. The options we would consult on are:
- 1) The status quo
 - 2) Ways of shifting the focus from organised transport – particularly travel by taxi – to more inclusive and independent forms of travel, such as encouraging independent travel training and promoting personal travel budgets for parents/ carers to enable them to get their children to school
 - 3) Removal of discretionary travel assistance all together, other than in specified exceptional circumstances
 - 4) Restrict the discretionary offer to only children and young people with specified severe learning or severe physical disabilities
 - 5) Introduction of charges (‘parental/student contributions’) for all discretionary transport, with differentials based on household income
 - 6) Promote as the primary travel offer Independent Travel Training or, where this is not appropriate, to the default offer of a Personal Travel Assistance Budget (other than in exceptional circumstances) and only then to organised transport to those with the highest level of need.
- 2.12. Adult Social Care have a separate Travel Assistance policy and a consultation on any changes is not planned until later in 2022. However, the above consultation will also seek to clarify travel support policy for home to college for young people aged 19 and above.
- 2.13. There is also the need to update the age 5-16 policies to ensure they are fully up to date and compliant with the statutory guidance.

3 ALTERNATIVE OPTIONS

- 3.1. It is proposed to consult on a range of options, which the council will be open-minded to. The council could choose not to consult and therefore decide now to continue with the status quo. However, given the cost pressures on the council and the involvement of the DfE to address these cost pressures, this is not recommended.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. It is proposed that a consultation is undertaken from 17 November 2021 to 5 January 2022, and that Cabinet considers the outcome of the consultation for decision on our proposed revised policy at the Budget Cabinet on 7 February 2022, for implementation for travel assistance from September 2022.

5 TIMETABLE

- 5.1. See above.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The forecast expenditure for home to school/college travel assistance (Period 6) is £6.645 million is as follows, excluding staff administration costs, although this does not provide allowance for a number of late applications for travel assistance this year.

	£
In house buses (SLA)	1,750,520
Taxis	4,380,000
Direct payments	462,318
System fees	52,280
Total	6,645,118

- 6.2. Budget Council approved savings of £50,000 in 2020/21 and £150,000 in 2021/22 for the following: "SEND Travel assistance - to review eligibility for SEND home to school/college travel assistance, in particular for post-16 students, subject to recommendations from the appointed consultant on home to school transport efficiencies".

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. Section 508B of the Education Act 1996 provides the duty on local authorities to ensure that suitable travel arrangements are made, where necessary, to facilitate attendance at school for eligible children. Schedule 35B of the Act (inserted by Part 6 of the Education and Inspections Act 2006) defines eligible children – those categories of children of compulsory school age (5-16) in an authority's area for whom free travel arrangements will be required. There is a power to make travel arrangements for other children under section 508C of the Act. The authority is required to have regard to the statutory guidance in relation to the discharge of its functions under sections 508B and 508C.

- 7.2. In relation to policy changes paragraphs 51-53 of the statutory guidance says the following:

Publication of general arrangements and policies

51. Local authorities must publish general arrangements and policies in respect of home to school travel and transport for children of compulsory school age. This information should be clear, easy to understand and provide full information on the travel and transport arrangements. It should explain both statutory transport provision, and that provided on a discretionary basis. It should also set out clearly how parents can hold local authorities to account through their appeals processes. Local authorities should ideally integrate their Sustainable Modes of School Travel strategies into these policy statements, and publish them together.

Policy Changes

52. Local authorities should consult widely on any proposed changes to their local policies on school travel arrangements with all interested parties. Consultations should last for at least 28 working days during term time. This period should be extended to take account of any school holidays that may occur during the period of consultation.

53. Good practice suggests that the introduction of any such changes should be phased-in so that children who start under one set of transport arrangements continue to benefit from them until they either conclude their education at that school or choose to move to another school. Parents make school choices based on, amongst other things, the home to school transport arrangements for a particular school, and any changes might impact adversely on individual family budgets.

- 7.3. In relation to children not of compulsory school age, Section 508C of the Act provides local authorities with discretionary powers to go beyond their statutory duties and provide transport for children who are not entitled to free transport. Paragraphs 36 and 37 of the statutory guidance says:

36. Charges can be made, or, as stated in Subsection (5) of 508C local authorities may also pay all or part of the reasonable travel expenses of children who have not had travel arrangements made either under the statutory duty placed on local authorities, or under their discretionary powers to make travel arrangements. Where charges are imposed, good practice suggests that children from low income groups (those not eligible for extended rights, either due to being just outside financial eligibility or live outside of the distance criteria and therefore not in receipt of free travel) should be exempt.

37. It is very much for the individual local authority to decide whether and how to apply this discretion as they are best placed to determine local needs and circumstances. It is recognised that local authorities will need to balance the demands for a broad range of discretionary travel against their budget priorities. While the department offers guidance, the final decision on any discretionary travel arrangements must rest with the individual local authority who should engage with parents and clearly communicate what support they can expect from the local authority.

- 7.4. For students of sixth form age, section 509AA of the 1996 Act requires a local authority to prepare, for each academic year, a transport policy statement that specifies the arrangements for the provision of transport or otherwise that the authority considers it necessary to make for facilitating the attendance of persons of sixth form age receiving education or training at relevant institutions. In considering what arrangements it is necessary to make for students with SEN or disability the local authority is required to have regard (amongst other things) to
- (a) the needs of those for whom it would not be reasonably practicable to attend a particular establishment to receive education or training if no arrangements were made,
 - (b) the need to secure that persons in their area have reasonable opportunities to choose between different establishments at which education or training is provided,
 - [(ba) what they are required to do under section 15ZA(1) in relation to persons of sixth form age,]
 - (c) the [distances, and journey times, between] the homes of persons of sixth form age in their area [and establishments] such as are mentioned in section 509AA(2) at which education or training suitable to their needs is provided, and
 - (d) the cost of transport to the establishments in question and of any alternative means of facilitating the attendance of persons receiving education or training there.

The authority must consult stakeholders in developing the policy statement.

- 7.5. Local authorities also have a duty to make such transport arrangements as are necessary for students aged 19 to 25 with EHCPs in residential education or attending further education colleges and must publish an annual policy statement (sections 508F and 508G of the Education Act 1996)

- 7.6. Statutory guidance is given in 'Post-16 transport and travel support to education and training' published in January 2019. This advises that:

In assessing what transport arrangements or financial support may be required, the local authority has flexibility over the decisions it makes but must have regard to the following:

- a. The needs of those for whom it would not be reasonably practicable to access education or training provision if no arrangements were made;
- b. The need to ensure that young people have reasonable opportunities to choose between different establishments at which education and training is provided;
- c. The distance from the learner's home to establishments of education and training;
- d. The journey time to access different establishments;
- e. The cost of transport to the establishments in question;
- f. Alternative means of facilitating attendance at establishments;
- g. Preferences based on religion
- h. Non-transport solutions to facilitate learner access

- 7.7. Local authorities are expected to target any support on those young people – and their families – who need it most, particularly those with a low income. The transport policy statement should set out clearly the criteria used to establish a learner’s eligibility to receive transport/financial support. Local authorities may ask learners and their parents for a contribution to transport costs and in exercising their discretion they should:
- ensure that any contribution is affordable for learners and their parents;
 - ensure that there are arrangements in place to support those families on low income; and
 - take into account the likely duration of learning and ensure that transport policies do not adversely impact particular groups.
- 7.8. The transport needs of young people with special educational needs and disabilities must be reassessed when a young person moves from compulsory schooling to post-16 education, even if the young person is remaining at the same educational setting. Arrangements cannot be limited to those young people who had been assessed as having particular transport needs prior to the age of 16. The Children and Families Act 2014 places a duty on local authorities to publish a ‘local offer’ setting out their services for children and young people with special educational needs and disabilities, and this must include information on the arrangements for travel to and from post-16 institutions.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. Because this is a service to children with SEND, the protected characteristics group that will be affected is children with disabilities. At this stage it has not been possible to undertake a full equality analysis as this will need to be undertaken when considering specific proposals that will be taken forward. An Equalities Analysis will be required before a decision is made.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. No specific impact.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. Decisions on Home to School transport take into account the safety of children i.e. the eligible children the council should make transport arrangements for all children who cannot reasonably be expected to walk to school because of their mobility problems or because of associated health and safety issues related to their special educational needs (SEN) or disability.

11 BACKGROUND PAPERS

Home to school travel and transport guidance Statutory guidance for local authorities 2014 <https://www.gov.uk/government/publications/home-to-school-travel-and-transport-guidance>

Budget Council paper, 4 March 2020

<https://democracy.merton.gov.uk/ieListDocuments.aspx?CId=142&MId=3344&Ver=4> with Savings information:
<https://democracy.merton.gov.uk/documents/b12470/Savings%20Information%20Pack%20Wednesday%2004-Mar-2020%2019.15%20Council.pdf?T=9>