

**Report of Director of Children’s Services**

**Report to Executive Board**

**Date: July 2014**

**Subject: Proposed changes to the Children’s Services transport policy - discretionary post 16 SEN transport**



Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

In February 2013 the Executive Board gave permission to consult on all elements of the delivery of children’s transport, provided by the authority at no cost to parents and carers, but in particular to consider whether any of the discretionary elements should be withdrawn on affordability or other grounds.

Following the consultation (and a further two Executive Board reports in July and October 2013) mainstream school and college transport services were revised. As a consequence the majority of the previous discretionary provisions were removed from the policy on a two-year phased basis.

Executive Board also agreed, in principle, to outline proposals that were also consulted on to change provisions for post 16 Special Educational Needs (SEN) transport. It agreed, however, that the detailed proposals should be further considered by the Board during 2014, after the final content of the new Children and Families Bill (now enacted) was published, and prior to any further policy changes. Thus, notice was given at that stage that changes would be introduced during 2014/15 and 2015/16 for post 16 SEN transport.

It is now possible to confirm that there is nothing in the final published Act (March 2014) that would fundamentally change the original recommended options for this provision, as approved by the Board in July 2013. Legal and equalities advice, however, has been received that suggests a further period of consultation should be undertaken before these proposals are approved and incorporated into policy.

Permission is therefore sought to undertake a new consultation to run between October and December 2014, which will fully inform those likely to be affected by the proposals prior to implementation in September 2015.

The delay in the passing of the Children & Families Act 2014 has meant that the current Children's Transport Policy, which specifies the ending of current discretionary transport provisions for those with Special Educational Needs on the 31 August 2014, must now be replaced with an interim policy which has been drafted for approval (Appendix 1).

A screening meeting has already taken place which considered the equality diversity/cohesion and integration (EDCI) impact, this indicated that because the original consultation was more than 12 months old, and because that consultation contained insufficient detail on the effect of changes for individuals, a new consultation should ideally be provided before Executive Board make a decision on the review or removal of universal discretionary SEN transport provision for those aged 16-25 (Appendix 2).

The attached interim policy will, therefore, have the effect of restoring current discretionary arrangements for a period of at least one further academic year to be effective between 01 September 2014 and 31 August 2015. Precise information on bringing in changes beyond that date will be fully informed by the outcome of the consultation and any agreed phasing arrangements.

As a result of the detail contained in the new legislation it is also proposed that the Interim Leeds Children's Services Transport Policy should be amended to include the new statutory obligations giving access to personalised budgets in order to fund statutory home to school transport arrangements for children with special educational needs aged 5 to 16. In so doing the Council's policy will remain fully compliant with the new legislation.

## **Recommendations**

The Executive Board is asked to approve the recommendations outlined below for post 16 SEN students currently in receipt of discretionary funding:

1. Agree that in partnership, and with the assistance of Scrutiny, a further consultation exercise be undertaken to consider future discretionary provisions for 16-25 year olds to run between October and December 2014 with, in due course, a follow up report providing specific recommendations.
2. Agree, to the introduction of the attached Interim Children's Services Transport Policy to be effective between 01 September 2014 and 31 August 2015.
3. Note the officer responsible for implementation is the Strategic Investment Contracting and Procurement Lead.

## 1. Purpose of this report

- 1.1 The purpose of this report is to up-date the Board in relation to the review of Children's Services Transport Policy and discretionary provision for those with Special Educational aged 16-25.
- 1.2 To seek permission to begin a new public consultation between October and December 2014.
- 1.3 To seek approval for the introduction of an Interim Children's Services Transport Policy

## 2. Background information

- 2.1 Current provisions are described in the existing Children's Services Transport Policy (December 2013).
- 2.2 A report was submitted to Executive Board in February 2013 requesting permission to consult on the future provision of transport in Leeds for children and young people. This included a proposal to review all elements of both statutory and current discretionary provision. This consultation included arrangements for the provision of discretionary home to school/college transport for students aged 16 to 25, paid for by the authority.
- 2.3 The following recommendations were subsequently approved and agreed in principle by the July 2013 Executive Board for full implementation, subject to the terms contained in the new Act:
  - i. *that the proposed provisions of the new Children & Families Bill would be kept under review and any implications taken into account in the implementation of a new policy;*
  - ii. *that in principle, in the first instance, parents/carers not eligible for statutory support should be expected to organise and fund the transporting of their own children to school or college;*
  - iii. *that the delivery of statutory low level need should continue to be re-modelled with the appropriate use of independent travel training, and, in order to be more efficient and cost effective, review the delivery method of all intermediate and complex need transport provision over the following twelve months;*
  - iv. *that for those post 16-19 SEN students already attending school/college (including those due to start in September 2013) the offer at that time would remain in place for a further academic year (2013/14);*
  - v. *that in principle, following a detailed assessment by Children's Services, where it is deemed not possible for the parent or carer to transport their child/young person to school/college, and the provision of a taxi or similar is the only safe, cost-effective and appropriate way of transporting the child/young person, the authority would provide a personalised means-tested budget towards the cost of transportation;*
  - vi. *that this budget should be provided on a means-tested basis only from September 2017, but phased in over a three year transitional period from September 2014 for all existing recipients;*
  - vii. *that a budget could reasonably be set at a maximum of up to £5,000 per annum for all new means-tested applicants once the policy was approved, **but this figure, and any proposed transitional arrangements, would first need to be considered and agreed by Executive Board;** (current emphasis)*

- viii. *that further detailed work should take place during 2013/14 in order to develop an implementation plan and establish robust eligibility criteria. It was agreed, therefore, that until Executive Board approval this aspect of the new policy would remain as it is currently described in the policy;*
- ix. *that future proposals should continue to be developed and reported back to Executive Board;*
- x. *that the current offer for existing students and new September entrants would be preserved for a further year. This was to allow the necessary planning to take place and also enable further discussion with service leads and strategic partners on the most sensible way of implementing any proposed changes; and*
- xi. *that independent travel training would continue to be available during that time, including access to a valid pass for travel on public transport across West Yorkshire, paid for by the local authority.*

### **3. Main issues**

- 3.1 A widespread consultation process on Children's Transport took place between February and April 2013. This included the proposed changes to SEN transport provision. A great deal of interest and participation was shown at the time from this sector including parents, carers, learning providers and young people themselves. Several well attended meetings were held at places of learning, which were at the Specialist Inclusive Learning Centres (SILCs) and colleges of further education. Full detailed summaries of the outcome of the 2013 proposals, including those relating to post 16 SEN transport, were provided to the Executive Board in July 2013.
- 3.2 The process, which saw the introduction of major changes to Children's Services Transport Policy in 2013, was made the subject of a member call-in and Scrutiny Inquiry. Although both concluded with a ratification of the Executive Board decision to implement the changes, Scrutiny members examined in detail the methodology employed during the public consultation and made recommendations for future application. As a further period of consultation will now be required to introduce further changes to policy, it is intended to invite Scrutiny to be involved from the outset and in the process allow members to discuss and shape the design of the consultation as part of the "lessons learned" response to the previous outcome.
- 3.3 It is no longer possible to implement the above mentioned and previously approved recommendations. New legislation, in the form of the recently enacted 2014 Children & Families Act, the Care Act 2014 and a newly issued SEN Code of Practice, have introduced a new approach to many aspects of SEN provision including the provision of transport. Although this new code specifies continuing support for those aged 0-25, statutory responsibility for the provision of transport from the home to place of learning is still restricted to those aged 5-16 (end of school year 11). Thus all other elements, including post 16 provision remain discretionary. The Care Act 2014 makes it a requirement to assess/review any difficulties experienced by people accessing services/employment/education.
- 3.4 Existing discretionary provisions as described in the current policy will expire in August 2014. The recently recommended additional period of consultation before changes to discretionary provision can be considered, means that an interim policy is now required.

- 3.5 The new Children & Families Act requires that, if requested by parents of children with SEN, who are in their statutory years of education, the Council must make available access to a personal budget for transport. The interim policy will, therefore, in addition to restoring existing discretionary provision for 16-25 year olds for a further academic year, also feature these new statutory obligations.

#### **4. Corporate Considerations**

##### **4.1 Consultation and Engagement**

- 4.1.1 As described above, a wide ranging public consultation was carried out during 2013.
- 4.1.2 Due to the fact that more than 12 months has elapsed since this consultation was completed, it has been recommended by the Council's Legal Department that this should not be used for the introduction of policy changes in September 2014 as it could be challenged because the original consultation did not fully detail the precise impact the proposed changes might have on individual families.

##### **4.2 Equality and Diversity/Cohesion and Integration (EDCI)**

- 4.2.1 A screening meeting has taken place (form attached), which considered the equality diversity/cohesion and integration (EDCI) impact. This indicated that because the original consultation was more than 12 months old, and because that consultation contained insufficient detail on the effect of changes for individuals, a new consultation should be undertaken before Executive Board is asked to make a decision on the review or removal of universal discretionary SEN transport provision for those aged 16-25.
- 4.2.2 The later than anticipated enactment of the Children & Families Act, which represents the most wide-ranging and significant piece of legislation in the past 40 years so far as SEN provision is concerned, further justifies the need to launch a targeted, effective and informative public consultation. The implications for service provision and entitlement are on a major scale, especially so with the launch of a revised SEN Code of Practice.
- 4.2.3 In addition to the implementation of the Children & Families Act from 01/09/14, a second piece of legislation will become effective in the shape of the Care Act. Although in this particular case the change in statutory obligations is centred on adult social care, the present over-lap in the age range of eligible persons in the Leeds policy (for those aged up to 25) means that this second Act will also significantly impact upon policy and future provision.

##### **4.3 Council policies and City Priorities**

- 4.3.1 It is not yet known how many parents and carers might exercise their new statutory right to take up a personalised transport budget, and as a result put their own individual transport arrangements in place.
- 4.3.2 The intention is to ensure that the offer made by this authority is sufficiently attractive to minimise the impact of parents taking up this option as otherwise it

will inevitably start to have an impact on the overall costs associated with maintaining the provision of these statutory services at a reasonable cost.

- 4.3.3 The introduction of an interim policy will ensure that the Council's statutory obligations are fully discharged.
- 4.3.4 Any proposals put forward following the consultation period, and subject to future Executive Board approval, will be shaped by reference to the Best Council Plan 2013-17 objectives. These include: 'Supporting communities and tackling poverty' with a priority of 'Providing accessible and integrated services', and 'Becoming a more efficient and enterprising council' with a priority 'Getting services right first time'.

#### **4.4 Resources and value for money**

- 4.4.1 Previously identified savings resultant of the proposed amendment of discretionary transport provisions will now be delayed until at least 2015/16 and possibly 2016/17.
- 4.4.2 The current total expenditure on discretionary post 16 SEN transport is approximately £2.6m (2012/13 figures). As a result of the delay in implementing intended changes this spending will continue to be incurred during the 2014-15 academic year, and possibly also in 2015/16 depending on the recommended phasing period.
- 4.4.3 There will continue to be a focus on reducing overall SEN expenditure through increased use of Independent Travel Training, wherever considered appropriate. This approach is now endorsed in legislation and so rigorous gate-keeping procedures will continue to be used to check that all expenditure in this area is legitimate and proportionate to need.

#### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 The newly enacted statutory obligations placed upon the Council by the Children & Families Act 2014, including those contained in the new SEN Code of Practice, have been fully considered in this report, recommendations, and resultant revised draft policy.
- 4.5.2 An element of general discretion over and above the levels already agreed will remain in the interim policy. Where it is felt that extreme and unique circumstances have been presented by an individual case a discretionary award can be made above the recommended maximum. Access to such an award would be secured via the robust appeal procedure incorporated within the policy. This will now be supplemented with a proposed Review Panel, which will seek to reach a reasonable and balanced position using restorative practice principles, prior to providing access to a formal independent appeals process.
- 4.5.3 This report is subject to call in.

## **4.6 Risk Management**

- 4.6.1 It will now be permissible under the new legislation to withdraw transport support for post 16 SEN students where no plan exists for continued learning.
- 4.6.2 The original Executive Board proposal in July 2013 suggested that it may be appropriate to consider removing all support, after a phased period, for students aged 19-25. This is no longer put forward as a recommendation due to the greater clarity now provided in the new Act, and the guidance on the future implications for this cohort of young people. Such proposals can, however, only be determined by the Executive Board following further detailed consultation.

## **5 Conclusions**

- 5.1 Following legal advice, a further period of public consultation is required before new policy amendments in relation to discretionary SEN transport can be considered.
- 5.2 An interim policy is required for the 2014-15 academic year, in order to ensure continuity of provision.

## **6. Recommendations**

- 6.1 The Executive Board is asked to approve the recommendations outlined below for post 16 SEN students currently in receipt of discretionary funding:
  - 6.1.1 Agree that in partnership, and with the assistance of Scrutiny, a further consultation exercise be undertaken to consider future discretionary provisions for 16-25 year olds; to run between October and December 2014 with, in due course, a follow up report providing specific recommendations.
  - 6.1.2 Agree to the introduction of the attached Interim Children's Services Transport Policy to be effective between 01 September 2014 and 31 August 2015.
  - 6.1.3 Note the officer responsible for implementation is the Strategic Investment Contracting and Procurement Lead.

## **7.0 Background documents<sup>1</sup>**

- 7.1 None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.