



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

CABINET

18 MAY 2023

Report of the Executive Director - Children's Services and Monitoring Officer

Amendments to the Home to School Transport Policy for Children of Compulsory School Age

1. Divisions Affected

1.1 County-wide.

2. Key Decision

2.1 This is not a Key Decision.

3. Purpose

3.1 For Cabinet to:

- a) Note the key points from the Local Government and Social Care Ombudsman (LGSCO) decision, dated 8 November 2022.
- b) Approve the proposed amendments to the Council's Home to School Transport Policy for Children of Compulsory School Age in the light of the LGSCO decision, and to ensure compliance with statutory responsibilities.

4. Information and Analysis

4.1 Under sections 508A and 508B of the Education Act 1996, local authorities are required to arrange free, suitable, Home to School Transport for children of compulsory school age who are assessed as

“eligible”, to their nearest suitable qualifying school. Eligible children fall within four categories, as set out in Schedule 35 of the Education Act 1996:

- Children with SEN, a disability or a mobility difficulty
- Children whose route to school is unsafe
- Children who live beyond the statutory walking distance
- Children from low-income families

4.2 Statutory guidance issued by the Department for Education ‘Home to school travel and transport guidance for Local Authorities’ dated July 2014 also requires local authorities to publish policies setting out how each authority proposes to meet the obligations and requirements set out in paragraph 4.1 above. The guidance requires that a local authority’s Home to School Transport Policy should:

- Be clear and easy to understand
- Give full information on travel and transport arrangements
- Explain both statutory transport provision and that provided on a discretionary basis
- Set out the appeal process.

4.3 In November 2022 the Local Government and Social Care Ombudsman (LGSCO) determined that two key aspects of Derbyshire County Home to School Transport Policy for Children of Compulsory School Age (‘the Policy’) that received Cabinet approval fell short of statutory requirements; The two key points the LGSCO determined unlawful are:

- i. Reference to the use of wheelchairs and mobility aids in the Policy when considering the ways in which a person could walk to school (used in the definition of walking distance in paragraph 2.2 of the Policy)
- ii. Reference to statutory walking distance when determining eligibility for children of compulsory school age with SEN, disability or mobility issues which would result in it being unreasonable to expect those children to walk to school.

Findings 35 and 36 in the Ombudsman’s review set out further details around the issues with the Policy:

35) The Council’s policy is contradictory and therefore it is not clear, which is fault. It is also not in line with the Education Act and statutory guidance as the general criteria such as the ‘statutory walking distance’ should not be considered when assessing transport needs of children

who are eligible due to special educational needs and/or disability. This is also fault.

36) In addition, the Council's policy states the statutory walking distance also applies to children who use a wheelchair and other mobility aids to assist them with being mobile. However, the Education Act makes no reference to the use of mobility aids. It defines an eligible child as one with special educational needs, a disability or mobility problems who 'cannot reasonably be expected to walk to school'. This is fault.

- 4.4 The Council agreed with the LGSCO to undertake a review of its Home to School Transport Policy for Children of Compulsory School Age in relation to children with SEND mobility problems so that it was in line with the Education Act 1996. As part of this process the Council sought independent legal advice.
- 4.5 The proposed amendments to the Derbyshire Home to School Transport Policy take into account the findings of the LGSCO and legal advice. Officers have incorporated the proposed amendments into an updated version of the Policy, which is attached as Appendix 2 and is recommended for Cabinet approval.

5. Consultation

- 5.1 The Council is not making any substantive changes to the Policy. The changes are to clarify the existing legal grounds for a child to access home to school transport and ensure full compliance with the legal requirements set out in the Education Act 1996. In these circumstances consultation is not considered necessary as there is no change to eligibility criteria and the Council are legally required to ensure the Policy complies with statutory requirements.

6. Alternative Options Considered

- 6.1 To not undertake the changes indicated as required by the LGSCO and recommended following legal advice. This option is not recommended as it would generate significant risk of further complaints to the LGSCO, adverse LGSCO determinations, including the possibility of a Public Report against the Council and possible legal challenge.
- 6.2 To update the Home to School Transport Policy for Children of Statutory School Age as part of a broader, wider refresh and update of the Policy which would be submitted to Cabinet at a later date. This approach is not recommended as immediate action should be taken to amend the Policy to ensure the Council meets statutory requirements.

7. Implications

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of this report.

8. Background Papers

- 8.1 LGSCO Final Decision.

9. Appendices

- 9.1 Appendix 1 – Implications
9.2 Appendix 2 – Amended Home to School Transport Policy for Children of Compulsory School Age.
9.3 Appendix 3 – LGSCO Final Decision

10. Recommendation(s)

- 10.1 That Cabinet:
- a) Note the key points from the Local Government and Social Care Ombudsman (LGSCO) decision, dated 8 November 2022..
 - b) Approve the proposed amendments to the Council's Home to School Transport Policy for Children of Compulsory School Age in the light of the LGSCO decision, and to ensure compliance with statutory responsibilities.

11. Reasons for Recommendation(s)

- 11.1 To ensure compliance with statutory requirements under the Education Act 1996.

12. Is it necessary to waive the call-in period?

No

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Implications

1 Financial

- 1.1 There are no financial implications arising directly from this report. Should the updated Home to School Transport Policy be approved, this will be used as the policy framework within which decisions to award Home to School Transport on a case-by-case basis will be taken. Costs associated with those decisions will be tracked and monitored by the appropriate services involved in transport delivery.

2 Legal

- 2.1 The Council is required to publish general arrangements and policies in respect of home to school travel and transport for children of compulsory school age. Section 508B of the Education Act 1996 places a duty on local authorities to make such travel arrangements as they consider necessary to facilitate attendance at school for eligible children.
- 2.2 A child is eligible for free home to school transport under section 508B of the Education Act 1996 on mobility grounds if they meet the criteria set out in paragraph 2 of Schedule 35B Education Act 1996. When considering mobility grounds there is no requirement to consider the statutory walking distance.
- 2.3 Paragraph 2 provides that a child will be eligible for free home to school transport if:
- a) he is of compulsory school age and is any of the following:
 - a child with special educational needs;
 - a disabled child;
 - a child with mobility problems.
 - b) he is a registered pupil at a qualifying school which is within walking distance of his home;
 - c) no suitable arrangements have been made by the local authority for enabling him to become a registered pupil at a qualifying school nearer to his home, and
 - d) having regard to whichever of the following are relevant:

- his special educational needs;
- his disability;
- his mobility problems;
- he cannot reasonably be expected to walk to the school.

2.4 Under the legislation a wheelchair cannot be considered walking, however, the use of a mobility aid could be taken into account when considering whether a child cannot reasonably be expected to walk to school. The proposed amendments have been made to the Policy to make it compliant with the Education Act 1996. They are not substantive changes to the Policy but clarification of the existing legal grounds for a child to access home to school transport.

2.5 The Local Government and Social Care Ombudsman's powers are defined by the Local Government Act 1974 as amended by the Local Government and Public Involvement in Health Act 2007. The LGSCO may investigate complaints of maladministration causing injustice. The LGSCO cannot question whether a Council's decisions are right or wrong simply because the complainant disagrees with them. He must consider whether there was fault in the way the decision was reached. (Local Government Act 1974, section 34(3)).

2.6 Section 5A of the Local Government and Housing Act 1989 imposes a duty upon the Monitoring Officer to prepare a report to the Executive if at any time it appears to her that any proposal, decision or omission would give rise to a contravention of any enactment or rule of law or statutory guidance in the exercise of its functions. This report seeks approval for a revised Policy to ensure it complies with the Education Act 1996.

3 Human Resources

3.1 There are no Human Resources implications arising directly from this report.

4 Information Technology

4.1 There are no Information Technology implications arising directly from this report.

5 Equalities Impact

5.1 The Council has a duty under the Equality Act 2010 to ensure that assessments of impact on groups with protected characteristics are

taken into account as part of and prior to formal decision-making. In terms of the recommendations within this report, the proposed updates to the Home to School Transport Policy for Children of Statutory School Age will help to ensure the needs of children with disabilities are met appropriately insofar as it comes to transport arrangements from their home to their place of learning. The recommendations in this report intend to have a positive differential impact on a group with protected characteristics under the Equality Act 2010.

6 Corporate objectives and priorities for change

6.1 None arising directly from this report.

7 Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 None arising directly from this report.