

**CABINET – 28 APRIL 2020****MAINSTREAM AND SPECIAL EDUCATIONAL NEEDS HOME TO
SCHOOL TRANSPORT POLICIES – 2020/21****REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT****PART A****Purpose of the Report**

1. The purpose of this report is to advise the Cabinet of the position with regard to implementation of the Mainstream Home to School Transport Policy and Special Educational Needs (SEN) Transport Policy which were approved by the Cabinet in March 2018.
2. A Judicial Review (JR) of the new SEN policy took place in 2019. The challenge to the Cabinet's decision was dismissed but a subsequent appeal against an element of the JR decision has resulted in a delay to policy implementation. This report explains the consequences of this and sets out the intended way forward.

Recommendations

3. It is recommended that:
 - a) The implications of the appeal against part of the Judicial Review decision of 7 April 2020 with regard to the implementation of the Council's Post-16 Special Educational Needs Transport Policy, be noted;
 - b) The decision of the Director of Environment and Transport to further suspend introduction of a default Personal Transport Budget (PTB) offer for post-16 SEN students to the start of the 2021/22 academic year (the main element of the new Special Educational Needs Transport Policy) be noted;
 - c) The revised process for the calculation and payment of voluntary PTBs for pupils of all ages which will be introduced from the start of 2020/21 academic year be noted.

Reason for Recommendations

4. The implementation of part of the Post-16 SEN Home to School Transport Policy, the offer of a default PTB for post-16 SEN students, was suspended in

July 2019 by the Director of Environment and Transport following consultation with the Cabinet Lead Member as a result of the judgment on the JR not being available. This significantly affected the Council's ability to deliver transport provision for the new academic year in 2019.

5. The Director's decision, following consultation with the Lead Member for Environment and Transport, to suspend for another year (to September 2021) the implementation of default PTBs for post-16 SEN pupils was taken as the outcome of the appeal of the JR had not been issued and transport needed to be arranged for the 2020 academic year. Although the outcome of the appeal is now known there is insufficient time to plan and implement the revised transport offer in time for September 2020.
6. Whilst fully upholding the Cabinet's decision, the judge originally hearing the JR in April 2019 suggested that the Council's SEN PTB Scheme should in part be clarified as it was considered to be complex and unclear as to how any individual PTB amount could be calculated. A simpler, transparent and more generous voluntary PTB Scheme has been developed in response to the judge's concerns.

Timetable for Decisions (including Scrutiny)

7. As indicated above, it is intended that a default offer of PTBs for post-16 SEN students will be implemented with effect from the beginning of the 2021/22 academic year, and the revised voluntary PTB scheme for all students will be introduced for the 2020/21 academic year.

Policy Framework and Previous Decisions

8. As part of the Medium Term Financial Strategy (MTFS) savings requirements, the Home to School transport policies, for both Mainstream and SEN students were approved by the Cabinet in March 2018. These were published by the Council in September 2018 and were originally due to take effect from the start of the 2019/20 academic year.
9. A JR heard in April 2019 delivered its findings in favour of the Council in July 2019. An appeal against that decision was made but was dismissed, with the Court of Appeal finding wholly in favour of the Council and delivered its findings on 7 April 2020.
10. Revised Home to School Transport policies confirming the 2020/21 academic year position were published on the Council's website on 25 March 2020. Parents, schools and stakeholders were directly informed of the new PTB Scheme and continued SEN policy pause at the end of March 2020.

Resource Implications

11. The pause in implementation of part of the new policy means that the planned £420,000 MTFS saving will be further deferred until the 2021/22 financial year. The implementation of low income charging and £150 grant for post-16

mainstream pupils from September 2019 achieved approximately £70,000 of savings against the previous cost of providing transport for the students during 2018/19. The impact of not realising the expected savings to date will be considered in budget planning for the next MTFS refresh.

12. This latest pause of the policy implementation allows timely decisions to be made around planning and tendering for services to deliver SEN transport for the 2020/21 academic year, which will help to reduce some of the risk of expensive late-tendered services and avoids uncertainty around transport provision for parents and carers.
13. The Directors of Corporate Resources and Law and Governance have been consulted on these changes to the originally scheduled policy implementations.

Circulation under the Local Issues Alert Procedure

14. A copy of this report has been circulated to all members of the County Council.

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PART B

Background

15. Variations to the Mainstream and SEN Home to School Transport Policies were agreed by the Cabinet in March 2018. The changes agreed were:
 - i. Personal Transport Budgets (PTBs) for post-16 SEN pupils, with an exceptions policy to be considered on a case-by-case basis; (instead of providing traditional transport such as minibuses or taxis).
 - ii. Removal of SEN Post-16 and nursery low income exemptions (requiring all those on low income to now pay an annual contribution of £330);
 - iii. Removal of Mainstream Post-16 transport and replacement with an £150 grant for eligible mainstream post-16 students from low-income or rurally isolated families

16. A claim for a Judicial Review (JR) was submitted in June 2018 on behalf of a 17-year-old SEN pupil. The claim, heard in April 2019, challenged the Council's policy on the grounds that the policy, contrary to the Equality Act 2010 and the Human Rights Act 1998, unlawfully discriminated on the grounds of age, indirectly discriminated on the grounds of disability, and failed to comply with the Public Sector Equality Duty.

17. The initial JR judgement was published on 19 July 2019 and dismissed the grounds of the claim in full, upholding the Council's decision to implement all aspects of the new policy. However, the judge was slightly critical of the manner in which the new PTBs had been publicised and explained, noting that although the Council had decided to give the claimant a PTB it had not stated how much this would be and it was unclear how it would have been calculated. Whilst this did not affect his decision on the new policy, the judge considered that the Policy's content on the calculation of PTBs was unsatisfactory.

18. An application was granted to the Court of Appeal on part of the SEN policy i.e. that of age discrimination. This was heard on 20/21 February 2020 with the judgement being published on 7 April 2020, finding in favour of the Council.

Suspension of the New post-16 default Personal Transport Budget Policy

19. Once an appeal to the JR judgement had been granted, representations were made by the Authority to ensure the setting of the Appeal hearing allowed the judgement to be received in a timely manner to deliver transport arrangements for the new academic year (September 2020), given that it normally takes seven months of planning.

20. However, with the appeal scheduled to be held on 20/21 February 2020, advice from the Council's legal representatives suggested a decision was unlikely to be advised by the end of March which would result in an insufficient period of time being available to plan the travel arrangements for the start of the 2020 academic year, taking note of the additional time that would be required in

delivering the new policy, allowing a sufficient period to manage appeals against default PTBs by service users which require to be heard at the start of the planning process to ensure the most efficient delivery of transport. It was therefore decided to defer the implementation until September 2021.

21. The delivery of the judgement in favour of the Council on 7 April does not change the position of deferring implementation. Insufficient time to plan and implement the new arrangements, along with potential confusion for parents and carers if they were advised of a different system for transport for this coming year at a time when they are in the process of applying for transport on the basis of the existing policy, would make a change at this point unworkable.

Revised Calculations and Payment of Voluntary Personal Transport Budgets

22. The initial JR judgement dismissed the grounds of the claim in full, upholding the Council's decision to implement all aspects of the new policy. However, as mentioned previously, the judge was slightly critical of the manner in which the new PTBs had been publicised and explained, noting that although the Council had decided to give the claimant a PTB it had not stated how much this would be and it was unclear how it would have been calculated. Whilst this did not affect his overall decision, the judge considered that the Policy's content on the calculation of PTBs was unsatisfactory.

23. In response to the judge's comments, the Council has revised the current voluntary PTB offer. A simpler, transparent and more generous voluntary PTB Scheme has been developed which provides the balance between generated savings and ensuring that existing voluntary PTB holders are unaffected in the short term. These new rates are as set out in the table below and details are available on the Council's website at:

<https://www.leicestershire.gov.uk/education-and-children/special-educational-needs-and-disability/transport/personal-transport-budgets>

One-way distance from home to school (miles)	Transport Required (Days per week)	
	5 days (full time)	Less than 5 days (part time)
0 - 1.99	£1,000	£810
2 - 4.99	£1,500	£1,200
5 - 10.99	£3,000	£2,400
11 - 15.99	£4,000	£3,200
16+	£5,000	£4,000

Deductions for Nursery and 16-18 Year Olds: There is an annual charge that is applicable to all non-statutory school age children eligible for transport assistance, including for PTBs. If your child is 16-18 years old or attending Nursery, an annual charge of **£660** (or **£330** for low income families) will be deducted from the amounts shown in the table above, including for those attending part-time.

Next Steps

24. The pause in implementing part of the policy means that the majority of the planned £420,000 savings were not made in 2019/20 and will not be made in 2020/21. The impact of this delay will be addressed later this year as part of the Medium Term Financial Strategy refresh.
25. Following the outcome of the JR appeal process, full implementation of the new SEN policy will proceed from the start of the 2021/22 academic year. As set out in the report to the Cabinet in March 2018 this means that provision of 'traditional' transport such as fleet minibuses or taxis will no longer be offered to post-16 students, other than in some cases after a consideration of individual circumstances that may be deemed exceptional.
26. The voluntary PTB offer has been clarified and provides an enhanced option which is open to all ages in light of the comments made by the judge and will be available from the start of the 2020/21 academic year.

Equality and Human Rights Implications

27. A full Equality and Human Rights Impact Assessment was completed as part of the Cabinet decision-making process in March 2018 and this will be reviewed and updated once the new policy is implemented.

Background Papers

Report to the Cabinet on 9th March 2018 – Mainstream and Special Educational Needs Home to School Transport Policy

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5178&Ver=4>

Report to the Cabinet – 13 September 2019 – Mainstream and Special Educational Needs Home to School Transport Policies – Outcome of Judicial Review

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5605&Ver=4>

Revised Post-16 transport guidance - <https://www.gov.uk/government/publications/post-16-transport-to-education-and-training>

Personal Transport Budgets - <https://www.leicestershire.gov.uk/education-and-children/special-educational-needs-and-disability/transport/personal-transport-budgets>

Judicial Review decision –

<http://www.bailii.org/ew/cases/EWHC/Admin/2019/1934.html>

Judicial Review Appeal decision –

<http://www.bailii.org/ew/cases/EWCA/Civ/2020/502.html>