APPENDIX C

SOS!SEN | The independent helpline for Special Educational Needs
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RESPONSE TO CONSULTATION ON PROPOSALS FOR SCHOOL TRANSPORT POLICY FOR YOUNG PEOPLE OVER 16 ON BEHALF OF SOS SPECIAL EDUCATIONAL NEEDS

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We would query the requirement that evidence of the disability or learning difficulty must always come from a GP or consultant. Where the young person has a statement or EHC Plan, we would suggest that, provided that the evidence for the statement or EHCP is complete and up to date that evidence in itself should be more than sufficient for assessment of entitlement to travel assistance.

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1.1: the proposals for young people in residential school or college are unlawful. Such young people have a right to family life pursuant to the European Human Rights Convention and transport policies must facilitate that. A policy that envisages that a young person in a termly residential placement will only see his family and local friends during school holidays, a young person in a 48 week placement may only see his family once or twice a year, or that a young person in a 52 week placement will not see his family for several years, is blatantly in breach of this principle.

Such a policy would also breach the Equality Act 2010, given that in the nature of things proportionately more young people with SEN and disabilities attend residential schools and colleges because of the shortage of specialist placements. It is clearly discriminatory to make it more difficult for such young people to travel home to see their families when in the nature of things able young people will not be subject to this detriment. We question whether the LA has carried out a full impact assessment and has considered this aspect of its proposals properly.

Furthermore, the proposed policy would be in breach of the LA's duties with regard to special educational provision, particularly the duty under s19 Children and Families Act 2014 which requires the LA to have regard to the need to achieve the best possible outcomes for children and young people with SEN and disabilities; and the overriding duty to provide holistic and integrated educational and social care provision. Any young person attending residential school or college will be vulnerable, but a young person with SEN and disabilities will be more so. To tell a young person attending a residential school or college for the first time that he will not see his parents for six or seven weeks would be inhumane, and would inevitably seriously affect his ability to settle into school or college and to access education and special educational provision properly. It would also carry a serious risk of wasting the LA's investment in the costs of the placement in question.

The duty to provide transport is based in part on the recognised need for children and young people to be with their families as much as possible, and it follows therefore that they must be permitted and assisted to visit their homes as frequently as possible taking into account all relevant factors. The norm for young people in termly residential placements should be for them to be provided with home to school/college transport on, normally, a fortnightly basis, but generally this will depend on normal practice for pupils at the placement in question and the advice of expert staff there who know the young person in question and also can advise on what other students do. For young people in longer residential placements, this should be dealt with on a case by case basis and again should depend heavily on the advice of the school or college.

The norm should also be for Surrey to provide transport if the young person needs to come home at other times for any reason, for example due to illness or the need to attend medical appointments or assessments.

Surrey previously had a policy similar to this which was the subject of judicial review proceedings (*The Queen on the application of AR and BR v Surrey County Council*). Surrey did not defend those proceedings, acknowledging that its policy was unlawful and it agreed to amend its then policy. That action was based on the same legal provisions as those which currently govern the duty to provide home to school transport; it follows that if the policy was unlawful previously, it is still unlawful.

As is recognised in the SEN Code of Practice, LAs dealing with young people with SEN and disabilities should focus in particular on the need to help them move into independent living and employment where possible. It should be recognised that the support of families may well be vital to this process It would be quite wrong, and seriously counter-productive, for that process to be sabotaged because young people are unable to see their parents for weeks, months or years at a time and are not able to access support from them at a particularly important stage in their education and transition to adulthood.

1.2: Whilst in principle we see no objection to travel assistance being provided via a social care package, it needs to be formally recognised that the primary responsibility lies with the Education Department and it would be more satisfactory for this to be the default position, on the basis that it is up to Education to recover any contribution or payment from Social Services. It would be highly undesirable for young people to be placed in a position where Education and Social Services are each claiming that the other should provide travel assistance, resulting in none being provided at all.

1.3: On the face of it, given that all LDAs should have disappeared by September 2016, this paragraph should be of extremely limited application. We do not understand why young people with LDAs should not be eligible for transport in the same way as those with EHCPs which are intended to replace LDAs, and therefore on the face of it the mainstream policy would not appear to be appropriate.

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2: We would suggest that some of the exclusions in the second section should be reconsidered. If a young person normally goes to a carer after college, then, provided that that does not lengthen the journey unduly, on the face of it there is no reason why the young person should not be given transport to the carer's address. It should be noted that, under the Care Act 2014, the expectation is that voluntary carers (including parents of disabled young people) should not be prevented from working, and therefore they should be enabled in making the same type of arrangements for care as parents and relatives of non-disabled young people make.

If a young person is in respite care or short break provision, this will normally be provided by the LA pursuant to a care plan and therefore the LA will have a statutory duty to arrange it and to ensure that the young person is able to access it. That duty normally includes the duty to provide transport from school to the respite placement. The proposed exclusion here is particularly difficult to understand given the requirement in the Code of Practice to help disabled young people to attain independence: it will often be the case that, for that purpose, the young person may be placed some of the time in supported accommodation, and it would be quite wrong for a young person in that situation to be prevented from accessing education by lack of transport.

If refusing to provide transport to fit in with after school clubs and activities means that young people with disabilities may not be able to access provision that is available for non-disabled young people, that would be discriminatory. The same applies in relation to educational provision planned over weekends and bank holidays, and link courses.

It would likewise be highly discriminatory and unlawful for an LA to refuse to transport a young person with SEN or disability to or from school or college for the purposes of examinations.

It is in particular the nature of educational placements for young people that they may need to travel between different venues - for example if they are in a special school which also supports placement at further education college courses; or if they are in a college with more than one campus. Unless the provision of transport for that purpose is separately and specifically funded through the EHCP, they should be entitled to travel assistance.

It is also the nature of further education placements that they may well not be for regular school hours, and may be for only three or four days a week. On the face of it there is no reason why young people with SEND should be prevented from attending on such courses by virtue of Surrey's refusal to provide travel assistance, and this would be highly discriminatory and therefore unlawful. If it meant that they were unable to access the provision set out in section F of their EHCP, it would also be in breach of s42 Children and Families Act 2014.

2.1: We would suggest that the policy should spell out in detail the proposals for travel allowances, including the sums envisaged and/or how they will be calculated. Where parents and carers opt to provide transport, the allowance should normally be on a mileage basis at a rate which equates to that allowed by the Inland Revenue, i.e. currently £0.45 per mile assuming a double journey twice a day. Given, in particular, current fuel costs that

rate is modest, and parents and carers should be entitled to reimbursement also for wear and tear on their vehicle, and a contribution towards the service and insurance costs of which the council would in effect be taking advantage.

We do not understand the basis on which it is stated that, where a young person opts for a travel allowance. Benefits are not provided for this purpose, mobility allowance being calculated on the basis of an assumption that LAs will comply with their legal responsibilities in this regard. Parents have no legal responsibility to contribute financially for young people over 18. Young people with SEN and disability are inherently less likely to be able to obtain part time jobs to fund transport.

Where the option chosen is for parents and carers provide transport, the LA will in any event reaping the benefit of a substantial saving by virtue of the free labour provided by the person driving the vehicle. There should therefore be no question in such cases of the LA charging the family yet more.

If a young person were prevented from attending their educational placement because they could not afford to make a financial contribution towards the costs of transport, the LA would be in breach of s42 Children and Families Act 2014 as the young person would be unable to access the special educational provision set out in section F of their EHCP.

The policy is potentially discriminatory and therefore unlawful because it is the nature of young people with SEN and disabilities that they may have to travel to educational providers which are further away than those normally attended by their able peers. The costs of transport are inherently likely to be greater, and although the policy is silent on the amount of contribution expected, there would be a serious concern that if, for example, this is on a percentage basis young people with SEND would be expected to pay disproportionately large amounts.

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2.1 c) The nature of college placements is that they may well not require students to attend at the start and end of each day – timetables covering the wide range of subjects and options available at colleges are such that inevitably not every student will have lessons or tutorials throughout the college day. If, for instance, a disabled student does not have a lesson until 11 a.m. it would be irrational to insist that his parents and carers travel through the rush hour to get him to college at 9 a.m., especially given that his able peers will not be subject to the same restrictions. Conversely, placements which involve apprenticeships may require the young person to start earlier and finish later than would be the case at an education placement. It is therefore particularly inappropriate to state that reimbursement will only be given for attendance by reference to the school or college day. On the face of it, provided the young person attends as required, the right to travel assistance should not be dependent on the time they arrive and leave.

2.2 and 2.3: The comments set out above with regard to contributions to costs also apply here. It is particularly concerning that the policy gives no indication whatsoever of what contribution Surrey is suggesting for those traveling by contract vehicles. Young people will

have no means of controlling the cost of such transport and it would be inherently discriminatory and in breach of the Equality Act 2010 if a young person cannot attend a college course because, for instance, he is too disabled to use public transport and the only means of accessing the course is by means of contract transport for which the LA is demanding a contribution which is beyond the young person's means. Again, if a young person is prevented from attending an education provider because he cannot pay a contribution, Surrey would be in breach of its duty under s42 CFA 2014.

We do not therefore consider that there should be any issue of young people being required to contribute towards travel costs to enable them to access the special educational provision they need and the education providers which Surrey is required by law to make available to them. We would however observe for the sake of completeness that, if such a provision were put in place, it would be particularly unfair for young people travelling on public transport to be able to seek reimbursement only termly in arrears: in such circumstances they may build up large debts which they simply cannot afford, particularly bearing in mind the experience parents we help have encountered with extended delays in Surrey's payment system.

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3.2: The list of qualifying education providers should include special schools and colleges, including independent special schools and colleges or independent schools named in section I of young people's EHCPs. It should also include vocational colleges and training courses, for example, catering, art, music, dancing, horticultural or agricultural colleges.

Given that the Code of Practice specifically provides that it covers young people in training and apprenticeships, the policy should also provide for transport to access this.

3.3: We would suggest the second line should be amended to state "… than that which is considered to be the closest suitable provider able to meet the young person's special educational needs and/or provide for their disability". The words "most appropriate" are ambiguous. Bearing in mind the s19 CFA duty, it would be inappropriate for the LA to avoid its responsibility to help young people to access education by claiming that it does not apply if any closer placement exists regardless of how unsuitable that placement might be.

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4.2 It is difficult to understand why, given that the evidence required under 4.1 can come from a range of medical professionals including a GP, this paragraph insists that only consultant evidence will suffice for parent with medical conditions. Consultants may not be readily available and may not be able to provide the required written evidence expeditiously, and for some conditions preventing a parent or carer from accompanying the young person (e.g. fractured legs) it may not be the norm for a consultant to be involved: clearly a young person should not be prevented from attending school or college for that reason. Provision should be made on the basis that evidence from a GP will be sufficient.

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The difficulty with the proposal to withdrawn transport where a young person suddenly decides not to travel in transport which has arrived on any given day is that this would conflict with the LA's statutory duty to ensure that young people with statements and EHCPs receive the provision set out in part 4/section F. Furthermore, the Code of Practice puts considerable evidence on the need to encourage young people to gain qualifications and life and employment skills, and to stay in education for that purpose: it also requires LAs to encourage young people who have left education to return to it for the purposes of completing college courses and gaining qualifications. A policy that says that a child returning to college will not receive transport to facilitate that will be in direct breach of that duty.

We would suggest that the default position should be to assume that such young people are refusing for SEND related reasons and/or that the focus should be on facilitating their attendance rather than making it more difficult by withdrawing transport. It is particularly important that young peole with SEND stay in school or college, and the focus should be on facilitating and encouraging their attendance.

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5.6: The limitation of travel assistance to journeys to and from home is unduly restrictive bearing in mind the varied nature of college placements, the fact that young people may need to travel between education providers and may need to travel to apprenticeship or training placements such as, for example, restaurants for those on catering courses.

The policy should also define what is meant by "home". Where, for example, a young person lives in supported residential accommodation near to their college during term time, that should be regarded as home for transport purposes.

The provision that education providers must arrange and pay for transport for visits for inclusion purposes must be accompanied by an agreement that Surrey will fund the education provider separately for this purpose through the young person's EHCP.

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7: We do not understand why the right to appeal is limited to parents and carers. It should extend to young people with capacity themselves, particularly bearing in mind the fact that the CFA and Code of Practice recognise the rights of young people over 16 to make decisions relating to their education provided that they have capacity. This is in any event inconsistent to references in 7.1-3 which do in fact seem to envisage the young person having a right of appeal.

We would suggest that the policy should set out that, in any of the events described, Surrey will always notify young people, parents and carers of their right to appeal and how to do so.

Overall, the appeal process is lacking in any acknowledgement of the urgency of transport issues. If a young person is not able to get to school or college due to inadequate transport arrangements, that will mean that they miss substantial portions of their education. Given that college courses may be relatively short, missing a few weeks may make the difference between passing and failing. It is particularly serious if the problem arises at the start of the course so that the young person misses the foundation stages of the course and has to start later than all their peers: going to college is difficult enough for young people with learning difficulties without placing extra obstacles in their way. Unless the appeal process can be considerably foreshortened, the principle should be that the young person will be given the transport they request without charge at least until the appeal process is finally completed.

In particular, we can see no reason why a period of 10 working days is envisaged for notification of each decision in the appeal process. LAs are able to issue decision letters within two days for, for example, school admission appeals and there is no reason on the face of it why they should not issue transport appeal decision letters within a similar timeframe.

7.1: The heading of this section is ambiguously phrased and very confusing. Is it envisaged that decisions will be made by an ANSM, the school/SEND post 16 area lead or a college or training provider?

The policy should set out the time within which the ASNM or other decision maker will consider the case. Given that issues of this nature can be urgent, we would suggest that this should be no more than five working days from receipt of the appeal.

7.2: Again, time limits for the panel to meet and make a decision should be set out. We would suggest that this should be no more than ten working days from the date of receipt of the review request.

The policy should set out what is meant by "partner services."

7.3: The policy should set out from where members of independent appeal panels will be drawn, and what training or experience they should have – again, experience should not be left solely to the discretion of the LA. It is wrong to state that members need not be independent of the LA: self-evidently a panel including individuals who are in any way connected to the LA cannot conceivably be described as independent. It is important that parents, carers and young people using the appeal process should have faith and confidence in it, and this requires true independence: it is a fundamental principle that such panels should avoid not only bias but also the appearance of bias. We would suggest that the LA should use the panel of independent individuals which it presumably maintains for admission and exclusion appeals.

The policy should set out the process of appeal in more detail: for example, it should state the number of people required to sit on the panel (we suggest normally at least three), and should set out a timetable for papers to be circulated prior to the panel meeting; it should also set out how the meeting will be dealt with including, for example, whether young people, parents or carers have a right to make representations in person to the panel - we

would suggest that they should. Provision should also be made for appellants, particularly young people, to be entitled to bring supporters and/or advocates to help them.

The suggested 40 day timescale is far too long, bearing in mind in particular that a young person may be unable to get to school or college unless and until transport is provided. Either this period should be severely reduced, or the policy should provide for transport to be provided in accordance with the request of the young person, parents or carers until the appeal is heard. If provision of this sort is not written in to the policy, Surrey will find itself regularly the subject of judicial review action on the basis that litigants will be fully entitled to claim that the appeal process does not provide an adequate alternative remedy.

Information to be given in the decision letter should also refer to the right to apply for judicial review as well as the right to put the matter to the local government ombudsman. The same applies to the information given on page 15 as to the right to take matters further if the individual in question is not satisfied with the outcome of an appeal.

Surrey Officers response:

1. **The word 'not' was in the Post 16 Consultation Policy and the omission in the Pre 16 is clearly recognised by SOS SEN and other respondents as a typo. This typo has been rectified in the Pre 16 Policy**
2. **We have rewritten the section on travel assistance in both policies when a child is in residential education provision to ensure clarity for parents and to ensure we adhere to statutory advice and guidance.**
3. **We state clearly that individual needs will be taken into account. This statement offers flexibility for individual situations to be considered (see extracted paragraph 5.3)**
4. **We have ensured clarity on the use of the phrase most appropriate and have ensured that all unintended errors / omissions are addressed**
5. **We have considered carefully who to seek a report from in regard assessing the medical situation and have clarified that it will be from a consultant in regard to a child's condition but where it is the parent's situation we will accept from a GP as this links to the parent's capacity not to the SEND of the child.**
6. **The scope of these policies is the travel assistance to education provision. We plan for 2017 to have a single policy that covers the other aspects where there may be eligibility for travel assistance eg respite**
7. **We have changed the phrase 'home' to 'habitually resides'**
8. **The appeals process is in line with DFE guidance and therefore we are not proposing any changes to this section in either policy**
9. **We consider we have listed the full range of qualifying providers**
10. **We annually review the charges and the allowances and benchmark with other Local Authorities. We are also mindful that we do not place parents in unhelpful situations in regard to tax liabilities.**

AND

In particular relating to response point 3, officers as a result of feedback and legal confirmed that this is in accordance with DFE Guidance, amended Section 5.3 of the Policy to read

5.3 Journey times

Home to education provider transport will be arranged so as to be as non-stressful as possible. Wherever possible, and subject to individual needs, the journey time will be no more than 45 minutes for primary aged pupils and no more than 75 minutes for secondary aged pupils, complying with best practice guidelines. In some circumstances it may be necessary to increase these timeframes where specialist placements are concerned. Journeys to and from education providers outside of Surrey's borders, or for children/young people placed some distance from their home may also, by definition, exceed the usual maximum journey times.

Whilst we recognise the wording may raise parental expectations we are clear that it does not set out that this is our definitive view as we do have the catch all 'wherever possible' and we can quote case law from.

Legal have since given their view that challenges would have come anyway in light of the DFE guidance, which we do not have to adhere to rigidly and is not an absolute right but we do need to have regard to the guidance as being best practice and having this in our policy shows that we do have regard to it.

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