

**SURREY COUNTY COUNCIL****CABINET MEMBER FOR ALL-AGE LEARNING****DATE:** 9 June 2020**LEAD OFFICER:** Dave Hill, Executive Director for Children, Families, Lifelong Learning and Culture**SUBJECT:** Charging for Home to School/College Travel Assistance for Post 16 learners with SEND**COMMUNITY VISION OUTCOME:** People**SURREY****SUMMARY OF ISSUE:**

The purpose of this report is to ask the Cabinet Member for All-Age Learning to reconsider the introduction of charging for Post 16 home to school/college travel assistance for young people with special educational needs and disabilities (SEND) who are beginning new courses in academic year 2020/21, and for young people with SEND who are continuing courses in academic year 2020/21. On 28 November 2017, the Cabinet agreed a draft policy document which contained a provision which provided for charging a contribution towards home to school/college travel costs for eligible young people with an Education Health and Care plan (EHCP) aged 16-18 but decided not to make the charge in the 2018/19 academic year. This was subject to review. At the same time, Cabinet also delegated to the relevant Cabinet Member all decisions relating to its implementation.

The Cabinet Member is now asked to reconsider the matter and to agree the implementation of charging for post 16 SEND transport, agree the levels of charging and to agree in broad terms the level of need that may warrant any charges being waived. The levels of charging for 2020/21 are set out in paragraph 13, and the mitigations for those young people or families in severe financial hardship in paragraphs 16-20 of this report.

**RECOMMENDATIONS:**

It is recommended that the Cabinet Member for All-Age Learning considers and takes into account the rationale for the implementation of charging a contribution for Post 16 travel assistance for SEND learners and the recommended charging levels, the equality impact assessment as well as the mitigations for young people or families in severe financial hardship and

1. agrees to the implementation of charging for Post 16 travel assistance for learners with an Education Health and Care Plan (EHCP) who are deemed eligible;
2. agrees to the proposed charges for academic year 2020/21, which are the same as for eligible Post 16 learners without an EHCP, and which are:

- 2.1 £547.20 for learners whose families are in receipt of the maximum Working Tax Credit and /or who continue to meet the eligibility criteria for Free School Meals; learners in care; care leavers; those on Income Support/Universal Credit in their own right; disabled young people who receive Employment Support Allowance/Universal Credit and either Disability Living Allowance or Personal Independence Payment in their name, or
- 2.1 £756.20 for all other learners;
3. agrees the circumstances when the Council will consider delaying, reducing or waiving contributions for young people or families in severe financial hardship and the process for dealing with any such applications.
4. notes and agrees minor grammatical amendments to the Council's Home to School/College Travel and Transport Policy which was published in February 2020 (paragraphs 21-22).

#### **REASON FOR RECOMMENDATIONS:**

The Council has a responsibility to meet its statutory duties related to home to school transport for eligible children and young people. Travel assistance for Post 16 learners is a discretionary provision and charging for it is permitted by law. Questions have been raised as to whether the decision taken by the Cabinet Member on 31 January 2020 to adopt the Home to School/College Travel and Transport Policy properly addressed the issue of charging. In order to address those questions, the Cabinet Member is now asked to reconsider the issue of charging afresh.

The proposed rates of financial contributions are reasonable when considered alongside the actual cost of providing the service and taking into account the fact that the charges are in line with those charged by other councils. Where there is severe financial hardship such that the charges are not affordable, the Council can use its discretion to delay, reduce or waive the charge. To ensure the effective and sustainable delivery of the Council's statutory responsibilities for home to school travel and transport for children and young people, changes have to be made. Surrey County Council has to make difficult choices in straitened financial circumstances in order to secure effective public spending and the efficient use of public resources.

#### **DETAILS:**

##### **Background to the decision:**

1. The principle of charging for Post 16 transport has been considered by Cabinet on more than one occasion in recent years. On 24 May 2016, a report was taken to Cabinet which proposed an update to the SEND Post 16 travel assistance policy. This included a proposal to introduce charging for Post 16 pupils with an EHCP from September 2016, but only for those who were starting in Year 12, i.e. not for those who were continuing a course of study. Charging would be exactly the same as for mainstream Post 16 pupils and the report acknowledged that this would ensure charging arrangements were

consistently applied. This report followed a 12 week period of consultation, including on the introduction of charging Post 16 pupils with an EHCP. In line with the requirements for Cabinet, an EIA was carried out and this covered the impact of introducing charging. Cabinet subsequently agreed the updated policy and the proposal to introduce charging.

2. During the 2016/17 academic year, a number of parents did not pay the charge and in June 2017 the Council made the decision to abandon the charge and reimburse any parent/student who had paid.
3. The issue of charging was considered again at the end of 2017, when Surrey County Council's Cabinet agreed on 28 November 2017 a new Travel Assistance Policy for children and young people with special educational needs and disabilities (SEND). The draft policy document was subject to public consultation in advance of that decision being made and the outcome of the consultation was reported to Cabinet. Under its new policy, Cabinet decided that the Council could charge a contribution towards home to school/college travel costs for eligible young people with an Education, Health and Care plan (EHCP) who are aged 16-18 (also referred to as Post 16 learners with SEND). Cabinet, however, agreed that the Council would not make a charge in the academic year 2018/19. Cabinet delegated authority to the Cabinet Member responsible for education, in consultation with the Assistant Director responsible for education, to approve future changes to the Council's Travel Assistance Policy, including the implementation of charging for Post 16 learners with SEND.
4. In January 2019, independent analysts conducted a review of SEND travel assistance for the Council that demonstrated that Surrey County Council is an outlier with regard to provision of transport for non-statutory school aged children and young people with SEND, those in pre-school and Post 16 year olds. The benchmarking confirmed that, of the local authorities that continue to provide transport for Post 16 year old young people, all charge for this provision. The fees charged vary by local authority and are in line with the charges for home to school transport for Post 16 young people without SEND.
5. The Council's own analysis in January 2019 indicated that 662 Post 16 SEND learners were receiving transport support in academic year 2018/19, at a monthly cost of £536k and an annual cost of £5.1m. This is an average cost per learner of £7,704 per academic year. Nearly one third were travelling on their own in a taxi.
6. On 31 January 2020, the Cabinet Member for All-Age Learning agreed a Home to School/College Travel and Transport Policy for implementation from September 2020. The policy aims to improve outcomes for children and young people in Surrey, particularly those with SEND. The policy is intended to make sure the Council continues to be able to deliver its statutory responsibilities. However, our analysis and comparisons with other local authorities indicates that previous poor practice and culture have been driving poor outcomes for children and young people in Surrey as well as high costs.
7. The policy also responds to engagement with young people with SEND in Surrey which confirmed that young people value independence highly, and that they want their parents, schools and the services that support them to help them prepare for adulthood, including continued access to education, employment opportunities and access to essential services and activities in the

community. The ability to travel independently is important to them now to attend school, participate in community life and socialise with friends; it is also fundamental to their future ambitions. Through the policy, the Council is more strongly supporting independence.

8. In approving the policy in January 2020, the Cabinet Member took into account the analysis of the responses to the public consultation which took place towards the end of 2019, the equality impact assessment and the mitigations of key concerns and impacts, and agreed the recommended policy option that, in line with statutory responsibilities, Surrey County Council will cease to provide home to school/college travel assistance for young people ages 17 -18, unless exceptional circumstances apply. The Council will continue to promote the use of the Student Fare Card Scheme, 16-17 Saver and Disabled Person's Bus Pass Scheme, which offer discounted travel on bus and rail services, to all Post 16 year old students. The Council's policy from September 2020 reflects this decision.
9. This report sets out the rationale for the implementation of charging a contribution for Post 16 travel assistance for SEND learners, in line with the financial contribution that is made by Post 16 learners without SEND. It sets out the steps the Council will take to consider delaying, reducing or waiving contributions for young people or families in severe financial hardship.

**Levels of charging:**

10. Benchmarking indicates that charges for Post 16 travel assistance vary by local authority. One large county council charges on a sliding scale based on the distance between home and school/college for the learner (£600 - £1,330 per academic year). The local authority reduces or waives the fee for low income families in receipt of benefits. Another charges a flat rate of £900, with a reduced rate of £450 for low income families in receipt of benefit. One large county expects all Post 16 learners with travel assistance to purchase a discounted travel card for public transport, costing £400. Another charges £660, with a reduced rate for low income families of £330.
11. As this is discretionary provision, local authorities are able to introduce charges that reflect a reasonable assessment of the cost of provision as well as affordability for families and young people. There is no universal or government directed charging structure for Post 16 travel assistance.
12. In May 2011, Cabinet agreed that transport charges for Post 16 learners would be aligned with the concessionary fare rate, and that the concessionary fare should be increased with the rate of inflation each year (the lower of Consumer Price Index and Retail Price Index).
13. In academic year 2020/21, the Council will be charging the small number of eligible Post 16 learners without SEND the following charges:

£547.20 for learners whose families are in receipt of the maximum Working Tax Credit and /or who continue to meet the eligibility criteria for Free School Meals; learners in care; care leavers; those on Income Support/Universal Credit in their own right; disabled young people who receive Employment Support

Allowance/Universal Credit and either Disability Living Allowance or Personal Independence Payment in their name, or

£756.20 for all other learners.

14. These charges are calculated on the basis on a daily rate of £2.88 and £3.98 respectively. The benefit and other entitlements for eligibility for the lower charge are widely used by government and other local authorities to identify low income households.
15. The recommendation is that the Council introduces the same charges for Post 16 learners with an EHCP for academic year 2020/21 on the basis of consistency, fairness and affordability. These charges reflect a modest contribution when compared to the actual average cost of transport for SEND post 16 learners, which in academic year 2018/19 was £7,704 per learner.

#### **Considerations of severe financial hardship:**

16. Ordinarily, the Council will expect, where a Post 16 learner with an EHCP is deemed eligible for travel assistance under exceptional circumstances, that the parents/carers or young person pay a financial contribution toward the cost of transport. As set out above, the two rates of charges provide a reduced contribution for families with a low household income. The charges are reasonable in comparison with charges made by other local authorities and the cost of providing the transport, are predictable, and can be paid in termly instalments.
17. However, in recognition that there may be circumstances where families or a young person experience severe financial hardship, the Council has discretion to consider delaying, reducing or waiving the charge.
18. In order to be eligible for consideration, the parent/carers or young person must demonstrate the following by way of evidence:
  - That the charge is not affordable because they would not be able to meet their essential living needs by the payment of the charge, and
  - that they have applied for a government 16-19 bursary, and where available, their provider's emergency hardship fund, and been refused. <https://www.gov.uk/1619-bursary-fund/further-information>
19. To apply, the parent/carer or young person must provide details of the financial circumstances of the household which evidence the criteria in paragraph 19, and evidence of application to national and local bursary and hardship schemes.
20. In making a decision, the Council will consider whether the financial hardship is likely to be temporary, and therefore if it is reasonable to delay or extend the period over which the charge will be made. The Council will consider reducing the charge to a level that is reasonable to enable the family/young person to meet their essential living needs. Where there is evidence that the financial hardship is likely to be long-lasting and severe, the Council will consider waiving the charge entirely.

## Procedural updates

21. Since the new Home to School/College Travel and Transport Policy was agreed on 31 January 2020, and published on the Council's website in February 2020, a small number of grammatical inconsistencies and errors in the policy wording have come to light. In addition, feedback from families indicates that communication about some of the processes for applying could be made clearer for parents and carers. To address these issues, and on the basis that they do not change policy only clarify it, the Cabinet Member is asked to note and agree that following minor amendments to the policy wording which will be updated through the information provided on the Council's website:

**Para 5.1:** To replace the sentence 'Where circumstances exist where the Council determines that travel assistance is necessary it may apply its discretionary powers on a case by case basis.' with the sentence ' However, the Council will consider transport assistance applications for children below statutory school age in extenuating circumstances.'

**Para 5.2:** To replace the word 'exceptional' with 'extenuating'.

**Para 5.1 and 5.2:** To remove the sentences 'The Council makes this determination through the special consideration and appeals process set out in Section 4.8.' and replace with the sentence 'Where a parent/carer believes that there are extenuating circumstances that warrant a child being provided with transport before they turn five years of age, they should complete the application form and provide supporting evidence of the case'.

**Para 7:** Remove the words in bold in the sentence 'If there is a family member or carer who is willing and able to transport the student **and if not, why it would not be possible or reasonable for them to do so**'. This is to clarify that while the Council can enquire about other arrangements, it cannot require parents or carers to transport their adult children.

22. Officers will amend spelling and grammatical errors in the policy as they are identified rather than through a Cabinet Member decision.

## Implementation timetable:

23. Taking into account the benchmarking analysis, the equality impact assessment (Annex A), the mitigations for severe financial hardship and the relevant legislation, the recommended implementation timetable for the implementation of these charges is for September 2020 (academic year 2020/21). Subject to Cabinet Member decision, the charges would be updated in the Council's policy and website, along with the procedural updates.

<b>CONSULTATION:</b>
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24. The Council undertook extensive consultation and engagement prior to the Cabinet decision on 28 November 2017 to permit the reintroduction of charging for travel assistance for Post 16 learners with an EHCP. Cabinet agreed, in taking account of the consultation responses and the equalities impact assessment, that the charge would not be introduced in academic year 2018/19 for these learners so that these learners and their families would have time to understand better the differences in law and entitlement for children and young people of statutory school age (ages 5-16), Post 16 (ages 16-18) and Post 19

(ages 19-25). The Cabinet decision is available at the following link:  
<https://mycouncil.surreycc.gov.uk/ieListDocuments.aspx?CId=120&MId=5112&Ver=4>

25. The Council also undertook extensive consultation and engagement prior to the Cabinet Member decision on 31 January 2020 to agree a new Home to School/College Travel and Transport Policy for implementation from September 2020. The new policy is clear about the different statutory entitlements for travel assistance by age, and how the Council will use its discretion and consider exceptional circumstances. The Cabinet Member decision is available at the following link:  
<https://mycouncil.surreycc.gov.uk/ieListDocuments.aspx?CId=717&MId=7327&Ver=4>
26. The Council has not undertaken an additional public consultation on the implementation of charging as this was the subject of extensive consultation in 2017, and the feedback informed the Cabinet decision at that time. The perceived injustice between Post 16 and Post 19 learners with SEND, identified in the EIA for that decision, has now been addressed and mitigated and are reflected in the EIA at Annex A of this report.
27. The recommendations in this report were shared with Family Voice Surrey with an invitation to submit feedback and views to the Cabinet Member for consideration prior to her decision. The proposed procedural update of paragraph 7 of the new policy is as a result of feedback from Family Voice in May 2020.

#### **RISK MANAGEMENT AND IMPLICATIONS:**

28. The Council's Home to School/College Travel and Transport Policy is a county-wide policy which will apply equally to all districts and boroughs and electoral divisions. The policy and the practice that results from it are intended to be consistent across all districts and boroughs and should enable greater consistency of practice and equity of provision of home to school travel assistance. The implementation of charging should be seen as an extension of the Council's policy intention to encourage the use of more environmentally sustainable forms of transport, supporting young people to walk, cycle and use public transport such as local buses and trains.
29. The implementation timetable implements charging arrangements that are predictable for the family or young person and that are set at a reasonable level for which they can reasonably budget. For those families in severe hardship, the Council can use its discretion to consider delaying, reducing or waiving the charge.

#### **Financial and value for money implications:**

30. Provision of home to school transport for Post 16 learners is discretionary, and the Council's policy is that it will be provided for Post 16 SEND learners in exceptional circumstances.

31. Based on a reasonable set of assumptions that 650 Post 16 SEND learners will apply for travel assistance for academic year 2020/21; that 50% will be deemed eligible under exceptional circumstances (325 learners); that 49% of these (159 learners) will pay the higher charge; that 49% of these (159 learners) will pay the lower charge; that 2% of these (7 learners) will have their charges waived, over the academic year, the reintroduction of charging would generate income of around £200k.
32. Expenditure on home to school transport for children with SEND in 2019/20 was £34.5m, an overspend of £2.9m. Unlike other elements of SEND expenditure, this is not funded from the Dedicated Schools Grant High Needs Block so is a direct cost to the General fund.
33. To ensure the effective delivery of the Council's statutory responsibilities for home to school travel and transport for children and young people, changes have to be made. Surrey County Council has to make difficult choices in straitened financial circumstances in order to secure effective public spending and the efficient use of public resources.
34. There are no specific MTFS efficiencies in place for home to school transport, however in addition to the £2.9m overspend on SEND transport, there were further overspends within school transport resulting in an overall overspend of £3.9m in 2019/20. There is therefore a need to bring this overspend in line with available resources.

<b>Section 151 Officer commentary:</b>
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35. Although significant progress has been made over the last twelve months to improve the Council's financial position, the medium term financial outlook is uncertain as it is heavily dependent on decisions made by Central Government. With no clarity on these beyond 2020/21, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority in order to ensure stable provision of services in the medium term. As such, the Section 151 Officer supports the proposed implementation of charging and associated recommendations within this report.

<b>Legal implications – Monitoring Officer:</b>
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36. There is no duty to provide free home to school/college travel assistance to Post 16 learners. Any transport provided by the Council is discretionary and does not have to be free of charge.
37. The Cabinet has previously made the decision that the Council may charge a contribution towards the cost of the provision of transport. The Cabinet Member is now being asked to approve the levels of charges to be applied and the process by which parents and carers can seek to have the charges delayed, reduced or waived.

38. The Council owes a fiduciary duty to its council tax payers which is analogous to that owed by trustees looking after property that belongs to others. Accordingly, in deciding how money should be spent, the Cabinet Member should take into account the interests of residents who have contributed to the Council's income and balance those interests against those who benefit from the expenditure. To assist the Cabinet Member in considering this, the report provides information about the cost of providing transport and some detail as to the level of fees charged by other authorities
39. Under S175 Education Act 2002, the Council must ensure that the functions conferred on it in its capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children. The Cabinet Member must therefore consider these aspects and be satisfied that this duty is met.
40. The public sector equality duty applies to this decision. There is a need to have due regard to the need to advance equality of opportunity for people with protected characteristics, foster good relations between such groups and eliminate any unlawful discrimination. These matters are dealt with in paragraphs 41 onwards of this report and in the equality impact assessment which is provided with this report. The Cabinet member will see that negative impacts have been identified and when reaching her decision, she will need to take account of these and any mitigating actions. The Cabinet Member will also note that the proposed level of fees for learners with SEND mirror those charged to learners who do not have SEND.

<b>Equalities and diversity:</b>
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41. The Council's prime outcomes through its home to school/college travel assistance policy are the promotion of independence and preparation for adulthood for children and young people, more efficient use of public resources and enabling the Council to continue to deliver its statutory responsibilities for home to school transport.
42. The Council's Equality Impact Assessment (Annex A) identified both potential negative and positive impacts for the Post 16 learners with an EHCP and their families. The main potential negative impact is financial pressure on household budgets. The main potential positive impact for these learners is incentivising them to attend local provision and to learn to travel more independently, thus preparing them for adulthood.
43. The Council will mitigate the potential negative impact on Post 16 SEND learners by communicating the charges widely to young people and their families through the Surrey Local Offer and Surrey County Council website, through schools and directly to parents and carers and young people. This will enable them to prepare and budget accordingly, including through applying for national and provider bursary and hardship funds. The Council will use its discretion to consider delaying, reducing or waiving the charge for families experiencing severe financial hardship.
44. Based on the Council's analysis of historic applications for travel assistance from Post 16 SEND learners, the approximate number of young people likely to be affected by the introduction of charging from September 2020 are:

- Higher rate – up to 159 young people
  - Lower rate – up to 159 young people
  - Reduced/waived rate – up to 7 young people
45. In the Council's EIA for the Cabinet decision in November 2017, the Council identified a risk that, as the law requires travel arrangements for eligible adult learners (age 19-25) with an EHCP to be made free of charge, an introduction of a contribution for the 16-18 age group would create perceived inconsistency, and could cause confusion for families and young people. In order to mitigate risk and to allow families and young people to understand the differences in law the Cabinet agreed that charges for travel assistance for Post 16 SEND learners would not be introduced in academic year 2018/19.
46. In January 2019, the Department for Education updated the statutory guidance published in 2017 related to Post-16 transport and travel support to education and training. This provided further clarification on the sixth form age and adult duties, including clearer explanation for local authorities, parents and young people of when each applies. Additionally, during the Council's consultation and engagement in Autumn 2019 on its proposed new policy, the different statutory responsibilities for different age groups were explained extensively and the responsibilities were set out clearly in the new policy adopted from September 2020. On this basis, the Council considers that the risk identified in the 2017 EIA has been sufficiently mitigated.

**Other implications:**

47. The potential implications for the following Council priorities and policy areas have been considered. Where the impact is potentially significant a summary of the issues is set out in detail below.

<b>Area assessed:</b>	<b>Direct Implications:</b>
Corporate Parenting/Looked After Children	No significant implications arising from this report
Safeguarding responsibilities for vulnerable children and adults	Set out below.
Environmental sustainability	Set out below.
Public Health	Set out below.

**Safeguarding responsibilities for vulnerable children and adults implications:**

48. The Council will continue to ensure that, where it provides home to school transport for a young person, it is safe.

**Environmental sustainability implications:**

49. The Council's policy will encourage the use of more environmentally sustainable forms of transport, supporting young people to walk, cycle and use public transport such as local buses and trains.

**Public Health implications:**

50. Walking and cycling are healthy travel options and promoting independence provides mental health benefits.

**WHAT HAPPENS NEXT:**

51. Subject to decision making, the charges will be published in the Council's Post 16 Transport Policy Statement and communicated widely to young people and their families through the Surrey Local Offer, through schools and settings and directly with families.
52. Subject to decision making, the charges will be implemented for academic year 2020/21 which begins in September 2020, with payment introduced on a termly basis.
53. Subject to decision making, the criteria and process for applying for the charge to be delayed, reduced or waived in cases of severe financial hardship will be published in the Council's Home to School/College Travel and Transport Policy and on the Council's website in June 2020.
54. Subject to decision making, the procedural updates to the Council's Home to School/College Travel and Transport Policy will be made in June 2020.

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**Consulted:**

Leader  
Cabinet Member for All-Age Learning  
Family Voice Surrey

**Annexes:**

Annex A: Equality Impact Assessment

**Sources/background papers:**

**Cabinet Report 28 November 2017 – New Send Travel Assistance Policy for Children and Young People with an EHCP or Statement of Special Educational Needs, 0-25**

**Cabinet Report 16 July 2019 – Special Educational Needs and Disability (SEND) Travel Assistance**

**Cabinet Member Report 31 January 2020 – Home to School/College Travel and Transport Policy**

**Consultation Information & Papers – <https://www.surreysays.co.uk/csf/home-to-school-college-travel-and-transport-policy/>**

**Consultation Introductory Video – <https://youtu.be/xLijELp4NIM>**

**Relevant Home to School/College Travel & Transport Legislation:**

Education Act 1996 section 508A (duty to promote sustainable modes of travel)  
Education Act 1996 section 508B (travel arrangements for eligible children)  
Education Act 1996 section 508C (travel arrangements for other children)  
Education Act 1996 section 508E and Schedule 35C (school travel schemes)  
Education Act 1996 section 508F (local authorities in England: provision of transport for adult learners)  
Education Act 1996 section 508G (local authorities in England: transport policy statements for young adults subject to learning difficulty assessment)  
Education Act 1996 section 509AA (transport etc for persons of sixth form age)  
Regulation 5 and Part 2 of Schedule 2 to The School Information (England) Regulations 2002 (as amended)

**Department for Education - Home to School Travel and Transport Statutory Guidance - <https://www.gov.uk/government/publications/home-to-school-travel-and-transport-guidance>**

**Department for Education - Transport to education and training for people aged 16 and over - <https://www.gov.uk/government/publications/post-16-transport-to-education-and-training>**

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