



GOVERNANCE COMMITTEE

TUESDAY, 21 APRIL 2020 AT 2.30 PM

ROOM CC2, COUNTY HALL, LEWES

Please note that the Committee Members will not be present at County Hall but will take decisions remotely

MEMBERSHIP - Councillor Keith Glazier (Chair)
Councillors Nick Bennett, Godfrey Daniel, Rupert Simmons and David Tutt

A G E N D A

- 1 Minutes of the meeting held on 3 March 2020 (*Pages 3 - 6*)
- 2 Apologies for absence
- 3 Disclosures of interests
Disclosures by all members present of personal interests in matters on the agenda, the nature of any interest and whether the member regards the interest as prejudicial under the terms of the Code of Conduct.
- 4 Urgent items
Notification of items which the Chair considers to be urgent and proposes to take at the appropriate part of the agenda. Any members who wish to raise urgent items are asked, wherever possible, to notify the Chair before the start of the meeting. In so doing, they must state the special circumstances which they consider justify the matter being considered urgent.
- 5 Local Government Ombudsman's Report (*Pages 7 - 20*)
Report by Assistant Chief Executive
- 6 Coronavirus (Covid-19) temporary arrangements (*Pages 21 - 24*)
Report by Assistant Chief Executive
- 7 Coronavirus - Entitlement to Occupational Sick Pay (*Pages 25 - 26*)
Report by Chief Operating Officer
- 8 Appointments to Outside Bodies (*Pages 27 - 28*)
Report by Assistant Chief Executive
- 9 Any other items previously notified under agenda item 4

PHILIP BAKER
Assistant Chief Executive
County Hall, St Anne's Crescent
LEWES BN7 1UE

9 April 2020

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GOVERNANCE COMMITTEE

MINUTES of a meeting of the Governance Committee held at Committee Room - County Hall, Lewes on 3 March 2020.

PRESENT Councillors Keith Glazier (Chair), Nick Bennett, Godfrey Daniel, Rupert Simmons and David Tutt

36 MINUTES OF THE MEETING HELD ON 28 JANUARY 2020

36.1 RESOLVED – that the minutes of the previous meeting of the Committee held on 28 January 2020 be confirmed and signed as a correct record.

37 REPORTS

37.1 Copies of the reports referred to below are included in the minute book.

38 ADOPTION PANEL ARRANGEMENTS

38.1 The Committee considered a report by the Director of Children's Services regarding the Adoption Panel arrangements to be constituted in support of the Regional Adoption Agency. The Director of Children's Services informed the Committee that the third sentence of paragraph 1.5 of the report should be amended to read 'However, the review of panel arrangements has identified that that some authorities currently have member representation on adoption panels and others do not.

38.2 The Committee RESOLVED to recommend the County Council:

1) to agree to discontinue the appointment of Members to Adoption Panels with effect from 1 April 2020 and agree the new panel arrangements set out in the report to be constituted in support of Adoption South East: and

2) to delegate authority to the Assistant Chief Executive to amend the Constitution to reflect the changes to Adoption Panel arrangements.

39 CODE OF CONDUCT AND CONFLICTS OF INTEREST POLICY

39.1 The Committee considered a report by the Chief Operating Officer in relation to updates to the Code of Conduct and Conflicts of Interest Policy in Employment.

39.2 The Committee RESOLVED (by 3 votes to 1) to approve the amendments to the Code of Conduct and Conflicts of Interest in Employment Policy as set out in paragraph 3.2 and Appendix 1 of the report.

[Councillor Godfrey Daniel voted against this resolution and Councillor Tutt abstained]

40 PARENTAL BEREAVEMENT LEAVE AND PAY

40.1 The Committee considered a report by the Chief Operating Officer regarding new legislation in relation to parental bereavement leave and pay.

40.2 The Committee RESOLVED to agree the Council's Parental Bereavement Policy for employees as: two weeks leave on full pay, from day one of employment, as a separate entitlement to the current policy provisions for compassionate leave.

41 PAY POLICY STATEMENT

41.1 The Committee considered a report by the Chief Operating Officer regarding the Pay Policy Statement for 2020/21.

41.2 The Committee RESOLVED to recommend to the County Council the updated Pay Policy Statement for 2020/21 as set out in Appendix 1 of the report

42 SOUTH EAST LOCAL ENTERPRISE PARTNERSHIP LTD - APPOINTMENT OF A DIRECTOR

42.1 The Committee considered a report by the Director of Communities, Economy and Transport regarding the appointment of a Company Director to South East Enterprise Partnership Ltd.

42.2 The Committee RESOLVED to approve the appointment of Councillor Glazier:
1) as the ESCC representative on the South East Local Enterprise Partnership (SELEP);
and

2) as the ESCC nominated Company Director of SELEP Ltd and be the voting representative of ESCC at SELEP Strategic Board meetings and at SELEP Accountability Board meetings.

43 ANNUAL GOVERNANCE STATEMENT - REPORTING ON SEPARATE BODIES

43.1 The Committee considered a report by the Assistant Chief Executive regarding the requirement to report, within the Annual Governance Statement, on separate bodies that the Council owns or has set up.

43.2 The Committee RESOLVED to:

- 1) agree that the Best Practice recommendation from the Committee on Standards in Public Life be interpreted as set out in paragraph 3.1 of the report; and
- 2) agree that a review be undertaken to collate the information set out in paragraph 3.2 of the report and that this be incorporated into the Annual Governance Statement completed at the end of the forthcoming year (2020/21).

44 AMENDMENTS TO CONSTITUTION

44.1 The Committee considered a report by the Assistant Chief Executive regarding proposed changes to the Council's Constitution.

44.2 The Committee RESOLVED to recommend the County Council to:

- 1) agree, that given that the exercise of the power to delegate functions to officers have been delegated to the Governance Committee and rest with the Leader and may result in amendments being made to the Scheme of Delegation to Officers, the Constitution be amended to reflect this;

- 2) approve the proposed changes to the Constitution as set out in paragraph 1.3 of the report;
- 3) agree the Local Choice Functions reserved to the Executive can be undertaken by Lead Members; and
- 4) delegate authority to the Assistant Chief Executive to amend the Constitution accordingly

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Report to: **Governance Committee**

Date: **21 April 2020**

By: **Assistant Chief Executive**

Title of report: **Local Government Ombudsman's report**

Purpose of report: **To consider the Local Government Ombudsman's report**

RECOMMENDATION:

The Committee is recommended to consider the contents of the Local Government Ombudsman's report in respect of complaint reference 18 012 500 and agree the recommendations set out in section 3 of this report.

1. Background

- 1.1 The LGO has power under the Local Government Act 1974 to investigate and issue Reports concerning allegations of maladministration or service failure. Details of complaints made to the Local Government and Social Care Ombudsman (LGO) are reported to members at Cabinet and Council through the Council quarterly monitoring report. The Governance Committee also receives an annual complaints report which sets out the annual report received from the LGO.
- 1.2 The LGO has issued the report attached at Appendix A following an allegation of maladministration by the Council in the exercise of its functions. The LGO has concluded that there was maladministration on the part of the Council and that this caused injustice to the complainant. The LGO has issued a public report which includes recommendations. The report is issued under s31 of the 1974 Act. The report must be reported to Council (or an appropriate Committee) who must consider the report and confirm within three months the action it has taken or proposes to take. The terms of reference of the Governance Committee include the consideration of reports from the LGO where there has been a finding of maladministration, and to exercise the powers and duties of the County Council in respect of the making of payments or the provision of other benefits in cases of maladministration.
- 1.3 The full report is attached at Appendix A. By way of summary, Mr X complained about the Council's decision around the provision of home to college transport for his adult learner son, Mr A, (aged 19). Mr A attends college five days a week and his college is named on his Education, Health and Care (EHC) plan. During the 2017-18 academic year the Council provided Mr A with home to college transport 4 days a week and his parents

provided transport for the 5th day. In June 2018, his parents applied for home to college transport for 5 days a week as their work commitments had changed which in their view meant they could not take him anymore. The matter was considered by officers and the Appeal Panel. The Appeal Panel felt it wasn't necessary to provide transport as it noted that both parents had flexible working arrangements which meant they could arrange their son's transport for one day a week. The Panel said this was a reasonable expectation of the parents.

- 1.4 Although the LGO acknowledges that the Council applied the correct statutory test, that of "necessity", in determining whether discretionary school transport should be provided, the LGO found that the Council's policy was at fault as it referred to discretionary transport being provide only "exceptional" circumstances, and as such found the decision of the Panel was flawed.
- 1.5 The LGO's finding in relation to the Policy is surprising as the LGO had previously considered the policy in an earlier decision and a few weeks before this case was determined by the Appeal Panel found that the policy was in line with the law and the Council was entitled to apply it, which the Panel then did. When this was raised with the LGO they said that they had changed their view and were not bound by the previous decision. Clearly if the LGO had made this decision in the previous case, this case would have been decided under a revised policy. In this regard the LGO's inconsistency is unsatisfactory. Councils and the public should be entitled to rely on previous decisions of the LGO.

2 Proposed Actions

- 2.1 The LGO has determined that the fault in the policy, and subsequent the decision caused an injustice to Mr X. The family have already been offered 5 days transport for attendance at the College for the start of the Sept 2019 school year. To remedy the injustice, the LGO has recommended the following action:
 - a) Apologise to Mr and Mrs X for the fault identified.
 - b) Pay Mr and Mrs X £300 in recognition of the uncertainty caused by the fault identified.
 - c) Review the cases of young adults (19-25) who have an EHC plan naming an educational setting and who were refused transport at appeal in 2018 and 2019. The review will consider if others have been similarly affected by the fault identified in this report.
 - d) Write to the young adults identified in its review (those affected by the fault identified in this report) and invite them to reapply for travel assistance (if still relevant) under its revised policy. There were 5 appeals for the academic year 2018/2019 and 7 appeals for the academic year in 2019/20
 - e) Review its policy on post 16 (to 25) SEND travel (2019) and revise it to properly reflect the test set out in law. The policy should be clear that the Council has a statutory duty to provide transport to post-19 learners if it is considered 'necessary', not exceptional.

- f) Properly reflect in its revised policy the difference between the approaches the Council should be taking for young people aged 16-18 and those over 19.
- g) Make the finalised policy available on its website.

3. **Recommendation**

- 3.1 The Committee is recommended to accept the findings of the LGO and agree to the action recommended by the LGO, and in so far as those actions relate to executive functions recommend that the Lead Member agrees to them.
- 3.2 It is also recommended that the Governance Committee requests that the Chief Executive write to the Local Government Ombudsman expressing concern at their change of view in relation to the policy.

PHILIP BAKER
Assistant Chief Executive

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Local Members: All

Background Documents

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**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
East Sussex County Council
(reference number: 18 012 500)**

20 January 2020

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr X – the complainant

Mrs X – the complainant's wife

Mr A – the complainant's son

Report summary

Education and Children services

Mr X complains about the Council's decision to provide home to college transport for his adult learner son, Mr A, for four days a week instead of five days. Mr X says the Council considered irrelevant information when it made its decision.

Finding

Fault found causing injustice and recommendations made

Recommendations

To remedy the injustice caused, we recommend the Council:

- Apologise to Mr and Mrs X for the fault identified.
- Pay Mr and Mrs X £300 in recognition of the uncertainty caused by the fault identified.
- Review the cases of young adults (19-25) who have an Education, Health and Care (EHC) plan naming an educational setting and who were refused transport at appeal in 2018 and 2019. The review will consider if others have been similarly affected by the fault identified in this report.
- Write to the young adults identified in its review (those affected by the fault identified in this report) and invite them to reapply for travel assistance (if still relevant) under its revised policy.
- Review its policy on post 16 (to 25) SEND travel (2019) and revise it to properly reflect the test set out in law. The policy should be clear that the Council has a statutory duty to provide transport to post-19 learners if it is considered 'necessary', not exceptional.
- Properly reflect in its revised policy the difference between the approaches the Council should be taking for young people aged 16-18 and those over 19.
- Make the finalised policy available on its website.

The complaint

1. Mr X complains about the Council's decision to provide home to college transport for his adult learner son, Mr A, for four days a week instead of five days. Mr A attends college five days a week and his college is named on his Education, Health and Care (EHC) plan. Mr X says the Council considered irrelevant information when it made its decision.

Legal and administrative background

The Ombudsman's role

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)
4. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).

Decision making

5. The Ombudsman's guidance 'Principles of good administrative practice' (2018) sets out the principles of good administration in decision making. These include:
 - Taking reasonable, timely decisions, based on all relevant considerations.
 - Following the law and taking the rights of those concerned into account.

Transport to education setting

6. Section 508F of the Education Act 1996 requires local authorities to make transport arrangements they consider "necessary" (or that the Secretary of State directs) to facilitate the attendance of relevant young adults at institutions where the local authority has secured the provision of education for the adult concerned. Relevant young adult means an adult who is under 25 years old for whom an EHC plan is maintained. An EHC plan is for children and young people between 0 and 25 years old in education, who have additional needs. The plan coordinates a child or young person's health and social care needs and sets out any additional support they might need. (*The Children and Families Act 2014, section 82*)
7. A council has a duty to secure the specified special educational provision in the EHC plan for the young adult. (*The Children and Families Act 2014, section 42*)
8. When a council finds it is 'necessary' to provide transport for the young adult under section 508F, then the transport must be provided and be free of charge (*Education Act 1996, section 508F(4)*).
9. If a council does not consider it 'necessary' to provide transport under section 508F it may still choose to pay some or all of the reasonable travel costs under either section 508F(8) or as social care provision under the Care Act 2014.
10. Under section 508G of the Education Act 1996 councils must set out information about the travel provision they have in place for relevant young learners so they and their families can make informed choices between institutions. The Special

Educational Needs and Disability (SEND) Code of Practice: 0 to 25 years (2014) requires councils to have clear policies about transport in their Local Offer.

11. A Local Offer sets out in one place information about provisions the local authority expects to be, and will be, available across education, health and social care for children and young people in their area who have special educational needs ('SEN') or are disabled. This includes those who do not have an EHC plan.
12. Statutory guidance 'Transport to education and training for people aged 16 and over' (2019) also highlights local authorities' duties under section 508F and 508G of the Education Act 1996. It notes that the overall intention of the adult transport duty is to ensure that those with the most severe disabilities with no other means of transportation can undertake further education and training after their 19th birthday to help them move towards more independent living.
13. The application of a transport policy in relation to a disabled young person engages the Equality Act 2010. Councils must have regard to the need to advance equality of opportunity to access education between persons with a disability and those without.
14. The Upper Tribunal (Administrative Appeals Chamber) has considered transport for post-19 learners with an EHC plan. The Tribunal commented that: *"the local authority has a duty to make transport arrangements for [a post 19 learner] if they consider that to be 'necessary' having regard to all the relevant circumstances. This is not a pure discretion. Although the question of what is necessary is a matter for them, in deciding that question they must exercise their judgment judiciously and in good faith. If they come to the conclusion that it is necessary, they must make the necessary arrangement and the transportation must be free of charge."* (*Staffordshire County Council v JM*, 2016] UKUT 246 (AAC))

Council's policy: Travel assistance for post-19 young people with special educational needs and disabilities (SEND) – August 2017

15. This policy was relevant at the time the Council considered Mr X's appeal. It sets out how the Council determines eligibility for travel assistance for students aged 19 and over.
16. It notes for those who begin an educational placement which starts on or after their 19th birthday, the home to school transport budget would rarely be used to support transport as it would be assumed the family (including wider family and social networks) would be responsible, and/or would be able to access relevant benefits.
17. The policy notes students with learning difficulties or disabilities, or their parents or carers, may be eligible for travel assistance in the most exceptional cases.
18. The policy sets out the Council will take the following factors into account to determine eligibility for assistance:
 - The student is unable to travel to their placement by public transport, either unaccompanied or accompanied by a responsible adult (specific and up to date evidence from relevant health and/or educational appropriate professionals supporting the student will be required).
 - The family does not have a suitable vehicle, which may include a Motability vehicle, for their transportation to school or college.
 - The length or complexity of the journey and whether parents or carers could arrange transport or act as a chaperone themselves. If parents/carers

(including wider family and social networks) are not available this should be fully explained in the application. It is unlikely that broader family caring responsibilities will be considered as exceptional circumstances.

- Other circumstances relevant to each case.

The Council's post-16 (to 25) SEND travel assistance policy – January 2019

19. The Council has introduced a new policy on travel assistance for students of sixth form age and above, who have SEND.
20. This policy notes that local authorities do not have a statutory duty to provide free travel support for young people of sixth form age and over. It notes that post 16 and post 19 transport is discretionary and that the Council will only assist with the most exceptional cases.
21. The policy also outlines the factors the Council will consider when determining eligibility for assistance. These factors include:
 - The nature of the journey for the student and family: whether the journey to education, whether by road, public transport or on foot, could be reasonably made if the student is accompanied.
 - The parent/carer/broader network: whether the student's family or broader network is reasonably able to transport or accompany the student.
 - Suitable vehicle or disability benefits: whether the family has a suitable vehicle, which may include a Motability vehicle.
22. The policy also notes that the following evidence may be required:
 - Recent evidence from a relevant health professional regarding a parent/carer's health, if this means that they are not able to accompany or transport their son or daughter themselves.
 - Evidence from the parent/carer's employer regarding their work commitments, to include working hours, days, times, location of work, and distance in miles from home to work and from the placement to work.
 - Written evidence to demonstrate other commitments, although broader caring responsibilities would not normally be considered as a reason why a parent would not be able to transport the student, as the family would be expected to find alternative solutions in most cases.

How we considered this complaint

23. We produced this report after examining relevant files and documents and speaking with Mr X.
24. We provided Mr X and the Council with a copy of the draft report and considered their comments.

What we found

Background

25. Mr A started a new course of education in September 2018, aged 19 years. Mr A is an adult learner. The relevant legislation surrounding his home to college transport requirements is the Education Act 1996, section 508F.
26. Mr A has a diagnosis of a moderate to severe learning disability. He has an EHC plan which names the college he currently attends.

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27. In the 2017/18 academic year, the Council provided Mr A with home to college transport for four days a week. Mr A's parents provided transport for the fifth day as their work commitments and schedule allowed it. The Council did not pay the travel costs incurred by Mr A's parents.

What happened

28. In June 2018 Mr and Mrs X applied for home to college transport for five days a week for Mr A for the 2018/2019 academic year. This was because Mrs X's work commitments now meant she could not take Mr A to college on the fifth day. Mr A's EHC plan specified he needed five days a week of education.
29. The Council refused to provide transport for the fifth day and asked Mr and Mrs X to send in a letter from Mrs X's employer detailing her work commitments for it to consider. The Council said the current discretionary offer for Mr A's home to college transport would remain at four days a week while it considered the matter. Mrs X sent the Council information from her employer which detailed her work commitments.
30. The Council also told Mr and Mrs X that all post 16 transport was discretionary and that local authorities need only offer discretionary transport to post 16s if it was judged that without the offer, the young person would have no other means to be able to get to their placement.
31. In September 2018, the Council considered the matter but declined the request as the panel felt it continued to be a reasonable expectation for Mr and Mrs X to make their own arrangements to provide transport for Mr A to get to college one day a week.
32. The Council said the decision was reached in line with the criteria outlined in the Council's post-19 transport policy 2017, namely that the expectation is for families to take responsibility for transport to college for someone in post-19 education. The Council gave Mr and Mrs X information on how to appeal the decision.
33. Mr and Mrs X appealed the Council's decision on the basis there was no duty on parents to accompany adult learners to their post-19 education placement. Mr and Mrs X also said they had no parental responsibility for Mr A and no legal obligation to ensure Mr A attended his college.
34. The Appeal Panel considered the Council's obligations under section 508(F) of the Education Act 1996 and noted Mr and Mrs X appealed on the following grounds:
- Mr A was not yet an independent traveller;
 - Mrs X was not able to provide transport one day a week;
 - there was no duty on the parents to provide transport assistance, and;
 - Mr and Mrs X's reliance on findings from a previous Ombudsman's report on a similar case.
35. The Appeal Panel decided it was not necessary to provide Mr A with an additional day of free transport.
36. The Council outlined that in deciding whether to offer further discretionary transport, the appeal panel considered the issues around Mr and Mrs X's work commitments. The panel noted both parents had flexible working arrangements which meant they could arrange Mr A's transport for the additional one day a week. The panel said this was a reasonable expectation of the parents. The panel

also suggested Mr and Mrs X could arrange and pay for someone else to take Mr A.

37. The Council also explained it had considered it necessary to offer Mr A four days of transport because of the family's work commitments. But, as the case was not exceptional, it was not prepared to exercise further discretion.

Analysis

Legal context

38. The law sets out a statutory duty on local authorities to provide free transport to relevant young adults aged 19 or over where they decide it is 'necessary'.
39. The law does not specify whether there is a duty for parents/carers to provide education transport for relevant young people aged 19 or over.
40. The Upper Tribunal set out the test of what transport arrangements might be necessary as being those "*having had regard to all the relevant circumstances*". The Council therefore has a qualified discretionary duty to provide transport.

The Council's policy

41. The relevant policy in place at the time of Mr X's appeal was the August 2017 policy.
42. The starting point for the policy should be the range of resources available to the young person to support them to travel to their education placement. However, the policy suggests the family will be expected to provide transport in practically all cases. In deciding on this basis, the Council appears to fetter its discretion. This is fault. This is because the Council should be considering each case on its own merits.
43. Further, the wrong test is set out in the policy. The policy states the test is whether the circumstances are 'exceptional', but the law says it is whether it is 'necessary' to provide transport. The two words have different meanings, but the law is very specific. This is fault.
44. The Council considered what was necessary but, given the faults in the policy's wording, we find the appeal was likely to have been affected by maladministration, and so was fundamentally flawed. By this we mean the Council would have had in mind the incorrect policy when it made its decision, and this may have influenced the decision.
45. The fault has caused Mr and Mrs X an injustice because there is uncertainty about what decision the Appeal Panel would have made, if it had been guided by an appropriate policy.
46. The Council implemented a new policy in January 2019. In addition to the faults outlined in paragraphs 43 and 44, the January 2019 policy also states that local authorities do not have a statutory duty to provide free travel support for young people of sixth form age and over. This is not accurate, because if the Council decides transport is 'necessary' it has a statutory duty to provide it free of charge for learners with an EHCP aged 19 and over. This is fault.
47. In response to my draft report, the Council disagreed with our findings. It said the Ombudsman had previously endorsed its policy and stated the policy was in line with the law. The Council said we have not explained why we have changed our mind.

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48. We do not dispute the fact we had previously stated the Council's policy was in line with the law. However, the previous decision does not set a precedent and further consideration of the policy has led us to change our view. We have set out our reasons for our decision in the above paragraphs.
49. The Council says it was entitled to take the view that travel support is only provided in the most exceptional cases. It says this is because 'necessity' is a high hurdle. But the tests of what might be considered 'exceptional' and what might be considered 'necessary' in any given situation, are clearly different. The Council's policy does not therefore accurately reflect what the law says, and our view remains that this is fault.
50. The Council says 'necessity' was the test applied, and this is supported by our findings at paragraph 35. This report does not intend to argue the Council applied the wrong test when it made its decision. Our view is that the wrong test is set out within the policy, and so there is uncertainty as to whether the Panel's decision was influenced by this when it made its decision within that policy's framework.
51. The Council says its policy does not make an assertion or statement that an assumption would be made that the family would provide transport in practically all cases.
52. The policy says "*...the home to school transport budget will rarely be used to support transport as it would be assumed the family would be responsible...*". The policy also says students may be eligible in the most exceptional cases. Therefore, our view remains that the wording of the policy can leave the reader with the impression the family will provide transport in practically all cases.
53. Finally, in relation to our recommendations, the Council says there were five appeals for the academic year 2018/2019 and seven appeals for 2019/2020. The Council says all but one of the young adults are still attending their college. The Council says the fact they are still attending clearly demonstrates that school transport is not necessary to facilitate their attendance. The Council says there is therefore no point in inviting them to reapply for travel assistance.
54. At this stage, we do not know how each young adult has been affected. For example, they may be missing certain days, arriving late or having to leave early, or incurring considerable expenses. Therefore, they may be suffering an injustice as a result of the Council's decision to refuse transport support. For this reason, our recommendation remains unchanged.

Recommended action

55. To remedy the injustice caused, we recommend the Council:
- Apologise to Mr and Mrs X for the fault identified.
 - Pay Mr and Mrs X £300 in recognition of the uncertainty caused by the fault identified.

Others potentially affected:

- Review the cases of young adults (19-25) who have an EHC plan naming an educational setting and who were refused transport at appeal in 2018 and 2019. The review will consider if others have been similarly affected by the fault identified in this report.

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- Write to the young adults identified in its review (those affected by the fault identified in this report) and invite them to reapply for travel assistance (if still relevant) under its revised policy.
 - Review its policy on post 16 (to 25) SEND travel (2019) and revise it to properly reflect the test set out in law. The policy should be clear that the Council has a statutory duty to provide transport to post-19 learners if it is considered 'necessary', not exceptional.
 - Properly reflect in its revised policy the difference between the approaches the Council should be taking for young people aged 16-18 and those over 19.
 - Make the finalised policy available on its website.
56. The Council must consider this report and confirm within three months the action it has taken or proposed to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this (*Local Government Act 1974, section 31(2), as amended*)

Decision

57. We find fault with the Council's school transport policy. We have made recommendations to remedy the injustice caused by the fault identified.

Report to: **Governance Committee**

Date: **21 April 2020**

By: **Assistant Chief Executive**

Title: **Coronavirus (Covid-19) temporary arrangements**

Purpose: **To consider proposed temporary measures in relation to Council meetings as a result of Covid-19 disruption.**

RECOMMENDATIONS

The Governance Committee is recommended to recommend the County Council to:

- 1) approve the approach in relation to Lead Member decisions being made virtually and to its continuation;**
 - 2) agree that the Leader will assume all the powers of the Cabinet where required as set out in paragraph 2.4 of the report;**
 - 3) agree the delegations to officers in relation to the functions of the Planning, Pensions and Governance Committees and the Discretionary Transport Appeal Panel as set out in paragraph 2.6 of the report;**
 - 4) agree that Member non-attendance related to Covid-19 be considered as an absence approved by the Council as set out in paragraph 2.8 of the report;**
 - 5) agree that the Chief Executive (or in their absence the Assistant Chief Executive) be authorised to cancel or postpone meetings, in consultation with the relevant Chair or Cabinet Member;**
 - 6) review these measures at the October 2020 meeting of the Council or as soon as practicable thereafter; and**
 - 7) agree to amend the Constitution accordingly.**
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1. Background

1.1 The current incidence of the Covid-19 virus both nationally and internationally is causing disruption to a wide range of business and social activity. Additional preventative measures have been introduced nationally to help contain the spread of the virus. This includes advice to individuals or groups to self-isolate for periods of time, and more general restrictions on travel and gatherings.

1.2 The spread of Covid-19 is therefore impacting upon the County Council's ability to hold its normal range of meetings in public. This issue has been recognised by Government and temporary regulations have been issued which relax a number of legal requirements on local authorities around physical access to meetings and papers and enable meetings to be held remotely, for example using video conferencing technology.

1.3 The regulations are broad and allow for councils to make specific local arrangements to suit local circumstances. This report outlines a range of proposed temporary measures to help enable the County Council's business to be conducted efficiently throughout the period of disruption due to Covid-19.

2. Supporting information

Executive decisions

2.1 It is legally permissible for a Lead Member to take a decision remotely and for the Leader to take most decisions which may normally be taken by Cabinet collectively. In light of disruption already experienced due to Covid-19 the County Council has implemented an approach to enable Lead Member to make decisions remotely, but in a transparent way that allows continued engagement, to enable decision making to continue as required. This approach which will be developed when feasible to include remote public access.

2.2 For the avoidance of doubt it is proposed that, in so far as such approval is required, Council approves the approach that has been taken and that this should continue.

2.3 The current practice of publishing an agenda and publicly available report continues in the usual way, and Members are able to make representations via email and/or video conferencing to the decision maker.

2.4 It is also proposed that the Leader (or in their absence the Deputy Leader) will assume responsibility for all the powers of the Cabinet in order that decisions can be taken if the Cabinet cannot meet or is not quorate due to Covid-19 related disruption.

Non-Executive decisions

2.5 The national regulations also allow for remote meetings of Non-Executive bodies to take place via internet, telephone or video conferencing. The County Council will aim to arrange virtual meetings of relevant bodies where required to enable core business to continue. However, there is potential for practical, health or capacity related constraints to limit the Council's ability to hold virtual meetings. It is therefore prudent to put in place delegations to officers which can be used where considered necessary.

2.6 In circumstances where the committees set out below are, in the view of the Chief Executive (or in their absence the Assistant Chief Executive) in consultation with the Chair of the relevant Committee, either unable to reasonably conduct necessary business by meeting virtually, or are inquorate, or the business of the meeting is not suited to a virtual meeting it is proposed that the following delegations be agreed:

- (i) In relation to the Planning Committee – to delegate the functions of the Planning Committee in so far as the law allows to the Director of Communities, Economy and Transport, in consultation with the Chair of the Committee.
- (ii) In relation to the Pensions Committee – to delegate the functions of the Pensions Committee in so far as the law allows to the Chief Operating Officer, in consultation with the Chair of the Committee.
- (iii) In relation to the Governance Committee – to delegate the functions of the Governance Committee in so far as the law allows to the Chief Executive, in consultation with Group Leaders.
- (iv) In relation to the Discretionary Transport Appeal Panel - to delegate the functions of the Discretionary Transport Appeal in so far as the law allows to the Chief Executive, in consultation with the members of the Panel.

Any decisions taken by officers under these delegations will be reported to the next meeting of the relevant committee or panel.

Member attendance

2.7 Covid-19 may impact on Members' ability to attend Council meetings either due to them being personally affected or due to general disruption or suspension of meetings. This may in turn result in Members becoming at risk of failing to meet attendance rules which require a minimum attendance at meetings of once every six months. The national regulations allow for Members' attendance at a virtual meeting to be counted for the

purposes of attendance rules. However, there may be factors which prevent a Member participating in a virtual meeting and thus continuing to be at risk of non-attendance.

2.8 To prevent any Member being at risk due to non-attendance as a result of Covid-19 it is proposed that non-attendance due to: being diagnosed with Covid-19; self-isolating due to suspected Covid-19; self-isolating in order to reduce the risk of contracting or passing on Covid-19; or as a result of following Covid-19 related guidance from Government be considered as absence for a reason approved by the Council in relation to attendance requirements.

3. Conclusion and reasons for recommendations

3.1 The Committee is recommended to recommend the County Council agrees the range of measures outlined in this report in order to enable the Council's business to be conducted during the period of disruption due to the Covid-19 virus. Although temporary national regulations allow for the holding of remote meetings and this will be implemented where possible, there are likely to be practical and capacity constraints which will place unavoidable limitations on the holding of meetings during this period. It is proposed that the Chief Executive (or in their absence the Assistant Chief Executive) be authorised to cancel or postpone meetings, in consultation with the relevant Committee Chair or Cabinet Member.

PHILIP BAKER

Assistant Chief Executive

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BACKGROUND DOCUMENTS

None

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Report to:	Governance Committee
Date of meeting:	21 April 2020
By:	Chief Operating Officer
Title:	Coronavirus (COVID-19) – Entitlement to Occupational Sick Pay (OSP)
Purpose:	To seek the Committee’s agreement to the temporary suspension of the current policy, whereby staff in their first year of service (Probation) are not entitled to receive OSP, for any sickness absence that relates to COVID-19

RECOMMENDATIONS

The Governance Committee is recommended to agree to the temporary suspension of the current policy of not paying Occupational Sick Pay SP to staff in their first year of service (probation) for any sickness absence that is related to COVID-19.

1. Background

1.1 As part of the negotiations to implement the national 1997 Single Status Agreement the Council introduced a new ‘One Year Supported Introduction to Employment (Probation) Policy’ via a Local Collective Agreement in July 1999. One of the key terms of this policy was that an employee would become entitled to a range of employment benefits upon the successful completion of the probation period. The range of benefits included entitlement to OSP, meaning that in practice, an individual who goes off sick in their first year of service (probation) is only entitled to Statutory Sick Pay (SSP), currently £94.25 per week.

2. Supporting Information

2.1 The terms of the Local Collective Agreement included the implementation of a number of terms and conditions of service that added significant costs, for example, harmonisation of the working week to 37 hours (previously, weekly paid ‘manual workers’ worked a 39 hour working week). At the time of the negotiations, there was a clear policy steer that the terms of the national single status agreement needed to be implemented at nil cost, therefore requiring the identification of offsetting savings. The provisions of the ‘Supported Introduction to Employment (Probation) Policy’ provided one of the key ways of achieving this.

2.2 The ‘Supported Introduction to Employment (Probation) Policy’ has been operating successfully for approximately 20 years and set against the above background, has been successful in achieving the purpose for which it was originally introduced. Anecdotally however, we are aware that for some employees, the prospects of nil (or very little) pay, sometimes results in individuals not calling in sick and attending work even when unwell. In the context of COVID-19, attending work when symptomatic is clearly highly undesirable and it could therefore be argued that this policy may well drive unhelpful behaviours and result in staff presenting for work even when symptomatic/unwell, as they cannot afford to not be paid.

2.3 The Government recently announced a series of measures to support the economy and employees during the current Coronavirus outbreak, including changes to the SSP regulations to provide SSP from the first day of absence, rather than the current fourth day of absence. The current policy of not paying OSP during the first year (probation) of employment would appear to be in conflict with these aims.

3. Conclusion and Recommendations

3.1 In light of the above, it is proposed that the current policy of not paying OSP during the first year (probation) of employment is temporarily suspended for all sickness absences that relate to COVID-19. This will therefore mean that anyone reporting sick due to COVID-19 will be entitled to receive full OSP, regardless of length of service.

3.2 Such an approach would chime with Government policy around COVID-19, as well as confirm our place as being a responsible and caring employer, responding quickly to the current, very unusual circumstances.

3.3 The Governance Committee is therefore recommended to agree to the temporary suspension of the current policy of not paying OSP to staff in their first year of service (probation) for any sickness absence that is related to COVID-19.

KEVIN FOSTER
Chief Operating Officer

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Report to: **Governance Committee**

Date: **21 April 2020**

By: **Assistant Chief Executive**

Title of report: **Appointments to Outside Bodies**

Purpose of report: **To receive an update in relation to appointments to outside bodies**

RECOMMENDATIONS: The Governance Committee is recommended to appoint a Councillor as a Council representative on the Sussex Inshore Fisheries and Conservation Authority for the period to 11 May 2021

1. Supporting Information

1.1 The County Council is invited to appoint Members (and in some cases non-County Councillors are eligible) to serve on a wide range of outside bodies whose role has a relationship to a function of the County Council. The appointments are a vital part of the County Council's working in partnership with voluntary bodies, statutory agencies and the public and private sectors.

1.2 In May 2017, Councillors Charman, Lambert and Loe were appointed as the Council's representatives on the Sussex Inshore Fisheries and Conservation Authority (IFCA). Councillor Charman has indicated that she wishes to stand down as a Council representative on this body and the Committee therefore needs to consider who to appoint as a replacement.

1.3 The Sussex IFCA considers issues to secure the right balance between social, environmental and economic benefits to ensure healthy seas, sustainable fisheries and viable industry.

1.4 Councillor Webb has expressed an interest in serving on the Sussex IFCA.

2. Recommendations

2.1 The Committee is asked to agree to the appointment of a Councillor as a Council representative on the Sussex IFCA for the period until 11 May 2021.

PHILIP BAKER
Assistant Chief Executive

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Background Documents

None

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