



**LEAD MEMBER FOR EDUCATION AND INCLUSION, SPECIAL EDUCATIONAL
NEEDS AND DISABILITY**

THURSDAY, 30 APRIL 2020 AT 10:00AM

CC2 - COUNTY HALL, LEWES

++ Please note, the Lead Member will not be present in person, but will be taking the decisions remotely++

A G E N D A

- 1 Decisions made by the Lead Cabinet Member on 9 March 2020 (*Pages 3 - 4*)
- 2 Disclosures of interests

Disclosure 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
- 3 Urgent items

Notification of items which the Lead Member considers to be urgent and propose to take at the end of the appropriate part of the Agenda
- 4 Local Government Ombudsman's report (*Pages 5 - 38*)
- 5 Any urgent items previously notified under agenda item 3

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22 April 2020

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LEAD MEMBER FOR EDUCATION AND INCLUSION, SPECIAL EDUCATIONAL NEEDS AND DISABILITY

DECISIONS made by the Lead Member for Education and Inclusion, Special Educational Needs and Disability on 9 March 2020 at County Hall, Lewes.

Councillors Bill Bentley, Kathryn Field and Alan Shuttleworth spoke on item 4 (see minutes 38)

36 DECISIONS MADE BY THE LEAD CABINET MEMBER ON 24 FEBRUARY 2020

36.1 The Lead Member approved as a correct record the minutes of the meeting held on 24 February 2020.

37 REPORTS

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

38 PROPOSED CLOSURE OF BROAD OAK COMMUNITY PRIMARY SCHOOL

38.1 The Lead Member considered a report by the Director of Children's Services, together with representations from the statutory proposal, including those received after the closing date, regarding the proposed closure of Broad Oak Community Primary School.

38.2 The Lead Member **RESOLVED** – to approve the closure of Broad Oak Community Primary School on 31 August 2020.

Reason

38.3 Whilst recognising the level and nature of objection to the proposal and the impact on the small number of pupils living in the Broad Oak community area, the case for the closure of Broad Oak Community Primary School remains strong for the following reasons set out in the report:

- the governing board's budget proposal is predicated on the school moving to a two-class structure from September 2020. Even then, the school would be in deficit from 2020/21 and would rely on Dallington in particular to prop up its budget. This would deny funding to Dallington pupils who could be negatively affected;
- in addition to using the budget from Dallington to underwrite Broad Oak's deficit, leadership capacity in Broad Oak, Dallington and Punnetts Town would be significantly reduced to offset the costs of keeping Broad Oak open. All three schools would have insufficient headship capacity to discharge effective, coherent and consistent leadership which has the potential for creating significant performance vulnerabilities in each school;
- the surplus places in the area, and at the school in particular, are still high and the forecast demand for places in the coming years does not indicate that the situation in the area will markedly change; and
- there are sufficient places at other schools in the area to accommodate all displaced pupils from the school.

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Report to: **Lead Member for Education and Inclusion, Special Educational Needs and Disability**

Date: **30 April 2020**

By: **Assistant Chief Executive and Director of Children's Services**

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

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

RECOMMENDATION:

The Lead Member is recommended to:

Consider the contents of the Local Government and Social Care 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 Local Government and Social Care Ombudsman (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 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 1 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 Governance Committee considered a report on this matter on 21 April 2020. The Committee accepted the findings of the LGO and agreed to the action recommended by the LGO, and in so far as those actions relate to executive functions, also agreed to recommend that the Lead Member agrees to them.

1.3 The full report is attached at Appendix 1. 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 transport should be provided, the LGO found that the Council's policy was at fault as it referred to transport being provided only in "exceptional" circumstances, and as such 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. The Governance Committee therefore agreed at its meeting on 21 April to request that the Chief Executive write to the LGO to express concern at their change of view in relation to the policy.

2 Actions recommended by the LGO

2.1 The LGO has determined that the fault in the policy, and subsequently 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 academic 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 2019/2019 and 7 appeals for the academic year 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.

2.2 Revised Policy

Attached at Appendix 2 is the revised policy. This policy reflects the findings of the Ombudsman in that:

- (i) The policy now refers to the wording of the Education Act 1996 in that a Council must make such arrangements for the provision of transport as they consider necessary to facilitate the attendance of specified groups of pupils receiving education or training. The previous policy referred in parts to the word exceptional, which has now been replaced throughout by the word "necessary", so there can be no room for doubt as to the criteria applied.
- (ii) The provisions relating to travel arrangements for 16-19 year olds are contained in a different section of the Education Act 1996 to those relating to post 19 adult learners. The drafting of two separate policies reflects the considerations relevant to each age group that the Council must make when determining what transport arrangements are necessary. This provides clarity and no room for doubt as to which section of the Education Act has been engaged.
- (iii) The Council has taken the opportunity to review the lay out and wording throughout to achieve maximum clarity and ease for those applying for transport assistance.

2.4 The current policy is available at:

<https://www.eastsussex.gov.uk/educationandlearning/schools/transport/strategy/download/>

3. Recommendations

3.1 The Lead Member is recommended to accept the findings of the LGO and agree to recommendations (c), (d), (e), (f), (g) set out in paragraph 2.1 above. Recommendations (a) and (b) having already been agreed by the Governance Committee.

PHILIP BAKER
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STUART GALLIMORE
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BACKGROUND DOCUMENTS

None

APPENDICES

Appendix 1 – Report by the Local Government and Social Care Ombudsman, Investigation into East Sussex County Council (reference number 18 012 500).

Appendix 2 - Revised ESCC 16-19 SEND Travel Assistance Policy and Revised ESC Post-19 SEND Travel Assistance Policy

**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.

-
- 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.

SEND Travel Assistance Policy for 16 to 19 year olds **DRAFT**



Date: tbc

Document purpose

This policy sets out how East Sussex County Council (ESCC) will decide eligibility for travel support for learners aged 16 to 19 who have Special Educational Needs and Disabilities (SEND).

In formulating this policy ESCC has had regard to the statutory guidance on “Post-16 transport and travel support to education and training”.

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1. Introduction

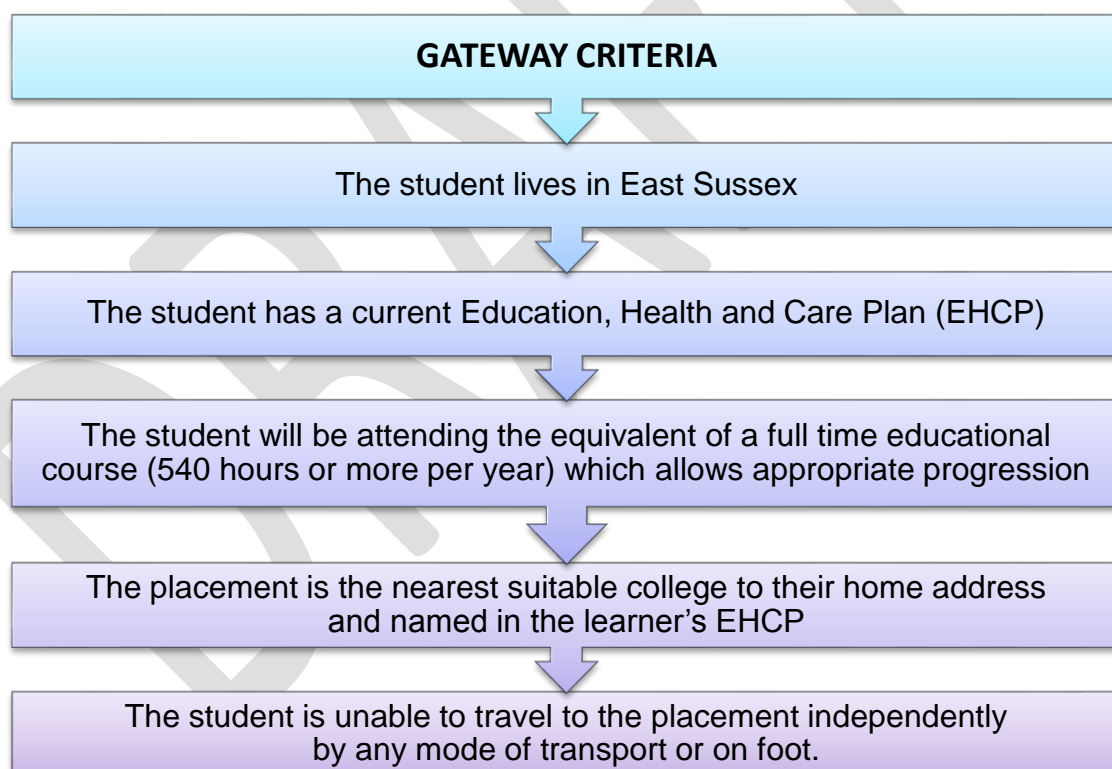
- 1.1. This policy explains East Sussex County Council's statutory responsibility in respect of travel assistance for students aged 16 to 19. It states how to apply for the travel assistance and how eligibility is determined and assessed.
- 1.2. This policy applies to students over compulsory school age but under 19 (or those who began a course of education or training before turning 19 and are still attending that course).

2. Local authority responsibility

- 2.1. Once young people with special educational needs and disabilities (SEND), reach 16 years old, the help councils have to give them with transport to school or college changes. They do not automatically get free school transport that younger children are entitled to.
- 2.2. Statutory guidance states that if someone asks a council for transport assistance for a young person over 16 years old it must assess their situation and decide whether to provide transport or financial support reasonably, taking into account all relevant matters. Councils are expected to target support at those who need it most. East Sussex County Council is committed to providing travel assistance to post 16 students with SEND, when their SEND and circumstances mean that they could not otherwise access their placement.
- 2.3. The Local Authority must prepare and publish an annual transport policy statement specifying the arrangements for the provision of transport or other support that the authority considers it necessary to make to facilitate the attendance of all persons of sixth form age (school years 12 and 13) receiving education or training. This can be found at: <https://www.c360.org.uk/travel/extra-help>.
- 2.4. The law concerning education transport is set out in the Education Act 1996. The Act divides children and young people into three groups: children of compulsory school age; young people of sixth form age; and adult learners. For sixth form age learners, if support for access is requested, this will be assessed and provided where necessary.
- 2.5. Statutory guidance from the Department for Education 'Transport to education and training for people aged 16 and over' (2019) states that local authorities may ask learners and their parents/carers for a contribution to transport costs for young people of sixth form age.

3. Criteria for travel assistance

- 3.1. The following gateway criteria must be met for an application for travel assistance to be considered.
- The student lives in East Sussex;
 - The student has a current Education, Health and Care Plan (EHCP);
 - The student will be attending the equivalent of a full time education course (540 hours or more per year) which allows appropriate progression;
 - The placement is the nearest suitable college to their home address, unless agreed otherwise by East Sussex County Council, and named in the student's EHCP;
 - The student is unable to travel to the placement independently by any mode of transport or on foot.
- 3.2. If these gateway criteria are met, the Council will then consider the circumstances of the student and the family and their broader network, to assess whether it is necessary to provide transport for the student. Parents/carers will be expected to prioritise transporting the student over other commitments.

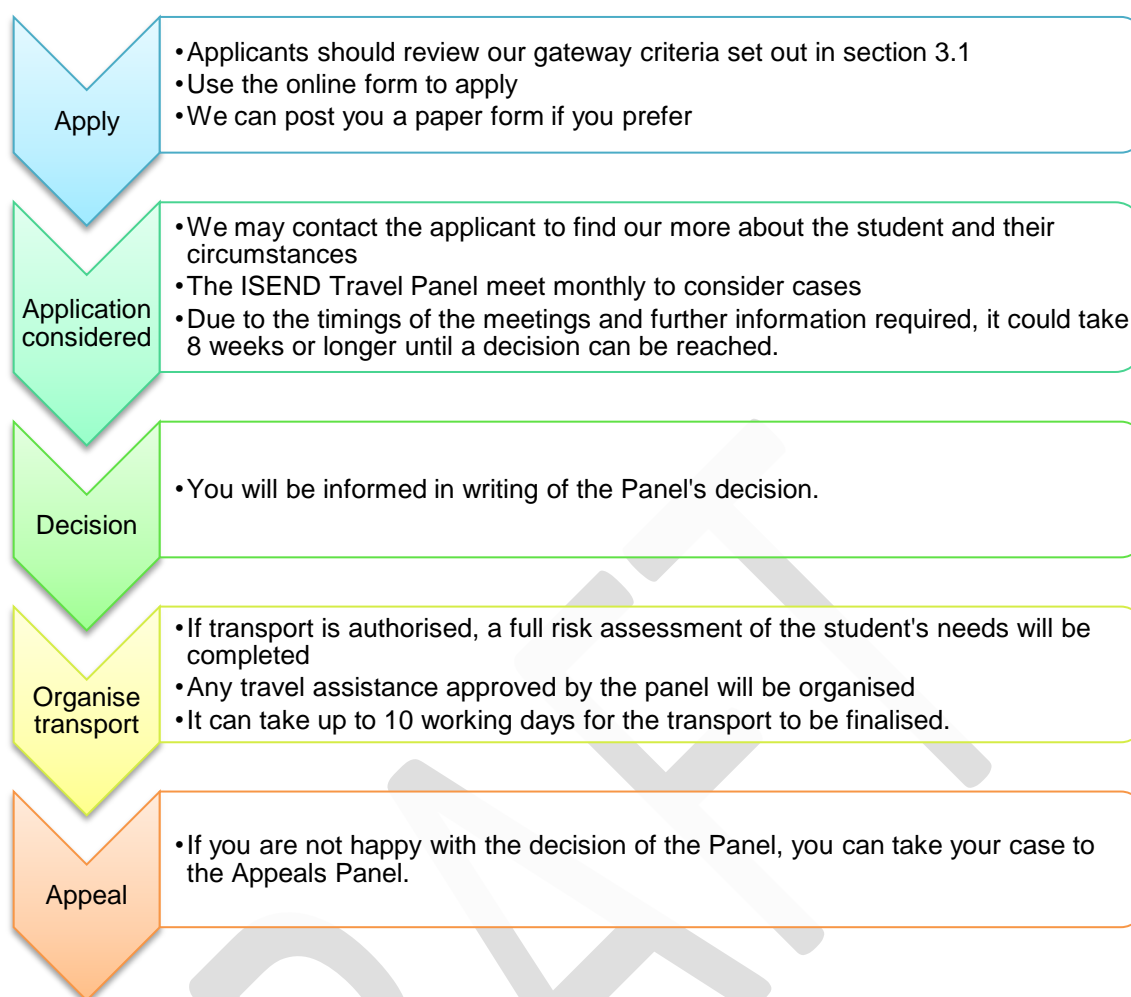


4. Contribution towards post-16 travel assistance

- 4.1. If the application for travel assistance is approved, the parent/carer will be required to contribute to the costs. The cost is based on the current cost for a 'Freedom' bus ticket and is reviewed annually. In the academic year 2019/20 this is £646 per year. It is due to rise in September 2020 to £684. An invoice will be sent and payment is usually made in 10 monthly instalments.
- 4.2. If the parent(s)/carer(s) qualifies as Low Income (using Free School Meals eligibility criteria), they will be required to pay half of the full amount. In 2019/20 this is £323 per year and will rise to £342 in 2020/21.
- 4.3. To qualify as Low Income, the student must qualify for Free Schools Meals. More information on eligibility can be found on the East Sussex County Council website at <https://www.eastsussex.gov.uk/freeschoolmeals>
- 4.4. Transport will not usually be arranged until the first payment is made. Transport may be ceased if payments are not made on schedule - if this occurs the Council will first contact the parent/carer to try and avoid this action.

5. How to apply

- 5.1. The most suitable and quickest way to make an application is online using the application form found in the following section of the East Sussex County Council website: www.eastsussex.gov.uk/SENDtravel. Alternatively we can post you a paper copy of the form if you would prefer.
- 5.2. A new application is required for everyone requesting post-16 travel assistance whether the student is remaining in the same school or moving to a new place of learning. A new application is needed for each new course or placement.
- 5.3. Applications will be considered by the ISEND Travel Panel which meets monthly. If the application fulfils the gateway criteria as set out in section 3, it will be reviewed and more information may be sought to help the Travel Panel make their decision. Information on how the decision is made can be found in the next section. It can take some time to reach a decision depending on the timing of the application and whether further information needs to be sought to make a decision. On average it could take 8 weeks for a decision to be communicated to the applicant.
- 5.4. Reimbursements for travel costs incurred before an application is approved will not be made.
- 5.5. If you are not happy with the decision of the Panel, you can take your case to the Appeals Panel. Further information on how to appeal can be found in section 9.
- 5.6. The following graphic provides more information on the application process.



6. How we make our decision

- 6.1. All applications will be assessed by the ISEND Travel Panel which consists of officers from across the Council. The members of the Panel will consider the individual circumstances of each case and will not apply blanket policies or make assumptions about accompaniment. The panel members will consider whether it is reasonably practical in the circumstances of each case for parents/carers to accompany the student. Applications will be assessed on the basis of the evidence provided. The Panel will consider whether travel assistance provided by the Council is necessary in each case, rather than the student or family required to make their own travel arrangements.
- 6.2. The Panel will use the information provided in the application, any other email correspondence with the Council in relation to the provision of transport as well as verbal representations made during phone calls.

6.3. In considering the eligibility of the student to receive an offer and what offer should be made, the ISEND Travel Panel will consider the following and/or any other relevant factors:

- Nature of the journey for the student/family for example, the distance, likely journey time, and complexity of the journey by road, public transport or on foot; whether the journey on foot or public transport could be reasonably made if the student is accompanied.
- The age of the student which may be relevant to considerations regarding parental/carers involvement
- Parent/carer/broader network available to accompany for example, the current commitments of the parent(s)/carer(s) and broader network; whether the student's family or broader network is reasonably able to transport or accompany them, given all other factors.
- Available suitable vehicle and/or disability benefits for example, whether the family has a suitable vehicle, which may include a Motability vehicle; whether the student is receiving PIP with a component intended to support travel; any current social care support.
- The student's needs relating to travel for example, whether the student has complex needs, and/or requires a second person on transport; if independent travel is a realistic goal, and whether this has been appropriately encouraged by the family.
- The financial circumstances of the family and potential impact of a declined application.
- Other relevant factors, for example, the health of the parent/carer and the potential impact of providing transport or accompanying the student, given all other factors.

6.4. The following evidence may be required in addition to an application for travel assistance:

- Recent evidence from a relevant health and/or educational professional regarding the SEND of the student and how this impacts on the need for travel assistance, their ability to walk or travel on public transport, accompanied or otherwise.
- 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 the student 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/carer would not be able to transport the student, as the family would be expected to find alternative solutions in most cases.

7. What travel assistance could be provided

- 7.1. Students will usually only be transported at published school/college start and finish times, and they may be expected to enable sharing with other students through early arrival or delayed collection if safe to do so.
- 7.2. An offer of travel assistance may be part-week or involve a pick-up or drop-off point, i.e. not door to door. This will, however, be assessed on a case-by-case basis, depending on the student's needs.
- 7.3. Travel assistance is not provided to work experience or dual placements, medical appointments or other off-site visits. Responsibility for these remains with the parents/carers or school/college as appropriate
- 7.4. Travel assistance to respite is also discretionary and can be requested. The Council will separately consider requests for transport to respite under the same discretionary criteria, on term time days only. An additional charge may be made for transport to respite if approved.
- 7.5. If the student attends a residential school and qualifies for travel assistance, this will only be provided at the start and end of each half-term or each week depending on the boarding arrangements. This will be made clear when the application is approved. We are not able to provide transport at other times or for parental visits for meetings.

8. What happens if travel assistance is approved

- 8.1. The most suitable travel assistance for the student will be assessed. This will be one of the following:
 - Personal travel budget
 - Independent travel training
 - Minibus or taxi.
- 8.2. Personal travel budget (PTB): A family may be offered a PTB to provide financial assistance to transport their child to school/college. The amount is based on the distance of a return journey from home to the nearest suitable school or college and is paid in monthly instalments.
- 8.3. Independent travel training (ITT): ITT is the process by which a person learns to make a journey between two places on their own and in safety – in this case the two way journey between home and school or college. The training provides extra help or support to make journeys alone using public transport (and walking or cycling as necessary) when the child has reached an appropriate age or stage of development. Students will be considered for an assessment for their suitability for ITT. Students and families are expected to positively engage with ITT. As a student progresses through the ITT, their requirements for travel assistance after training will be re-assessed.
- 8.4. Minibus or taxi: Where the Council will be providing the transport, the student will be risk assessed for the provision of safe and suitable transport arrangements.

9. Right to appeal the decision

- 9.1. East Sussex County Council operates an appeal process for transport cases. Everyone has the right to appeal if they are unhappy with a decision not to provide travel assistance or the type of travel support being offered.
- 9.2. The Discretionary Transport Appeal Panel is made up of three elected County Councillors who will consider the original application and the appeal application form together with any supporting documents or information provided to the Council in relation to the application. The panel will also consider all written and verbal representations from the parent/carer and officers involved in the case that is provided before the deadline for the meeting. It is not, however, possible for students/parents/carers to attend appeal panel meetings in person.
- 9.3. An application form needs to be completed to make an appeal. If the application makes reference to financial hardship, the financial section of the form needs to be completed in full.
- 9.4. More information about the appeals process as well as the form to request an appeal can be found on the school transport appeals webpage: <https://www.eastsussex.gov.uk/educationandlearning/schools/transport/free/school-transport-appeals/>

10. Ongoing provision of travel assistance

- 10.1. Travel assistance provided will be reviewed annually.
- 10.2. A new application must be made if the young person moves house or other circumstances change.

11. Other travel assistance available if application declined

- 11.1. Where it is decided that travel assistance will not be provided by the Council, the parent/carer may consider applying for one of the following:
 - Mileage allowance
 - Vacant seat scheme
 Both can be requested via our website at: www.eastsussex.gov.uk/SENDtravel
- 11.2. Mileage allowance: This scheme is available to low income parents/carers who have to travel long distances (over 10 miles) to transport a student to the college indicated in their EHCP. The mileage allowance given will be 25p per mile for one return journey per day for the miles beyond the first 10 mile of the journey from home. For example, where the distance from home to college is 15 miles, the allowance given will be calculated as 2 journeys x 5 miles x 25p. Proof of attendance will be sought from the school/college. The following criteria must apply for claims for mileage allowance to be considered:
 - The family qualifies as low income using the same criteria for free schools eligibility. Further information can be found at: <https://www.eastsussex.gov.uk/educationandlearning/schools/school-life/meals/free/>

- The student is attending the college named in their EHC Plan
 - The journey exceeds 10 miles between home and college.
- 11.3. Vacant seat scheme: For some routes to schools/colleges it is possible to apply to pay for a seat on a vehicle. The charge is currently £930 per year paid termly (reviewed annually). It may be necessary for the parent/carer to take the child to an existing stop. If a change is made to the shared route which means that the cost of the vacant seat increases, this increase may be passed onto the parent/carer, or the offer of the vacant seat withdrawn. We will have to withdraw the vacant seat offer if we need the seat for a child who qualifies for free transport or if we no longer have any children on the route that qualify for free transport. The Council will give as much notice as possible however the minimum notice given will be one week.

12. Further notes about this policy

- 12.1. If East Sussex County Council makes any change to this policy which is assessed as likely to have an impact on current and prospective students, the Council will inform the immediately affected families at the earliest opportunity. Such changes may include, but are not limited to, changes required by the impact of further cost saving requirements placed upon the Council and further limitations on this discretionary support.
- 12.2. This policy can be found online at: <http://www.eastsussex.gov.uk/schooltransport>
- 12.3. The annual ESCC 16-19 Transport Statement, which includes details of concessionary fares, discounts, subsidies, passes or travel cards and college contact details for 16-19 year old students can be found on the Connections 360 webpages: <https://www.c360.org.uk/travel/extra-help>.

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SEND Travel Assistance Policy

for post-19 year olds **DRAFT**



Date: tbc

Document purpose

This policy sets out how East Sussex County Council (ESCC) will decide eligibility for travel support for learners aged 19 to 25 who have Special Educational Needs and Disabilities (SEND).

In formulating this policy ESCC has had regard to the statutory guidance on “Post-16 transport and travel support to education and training” and in relation to the duty set out in section 508F Education Act 1996.

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1. Introduction

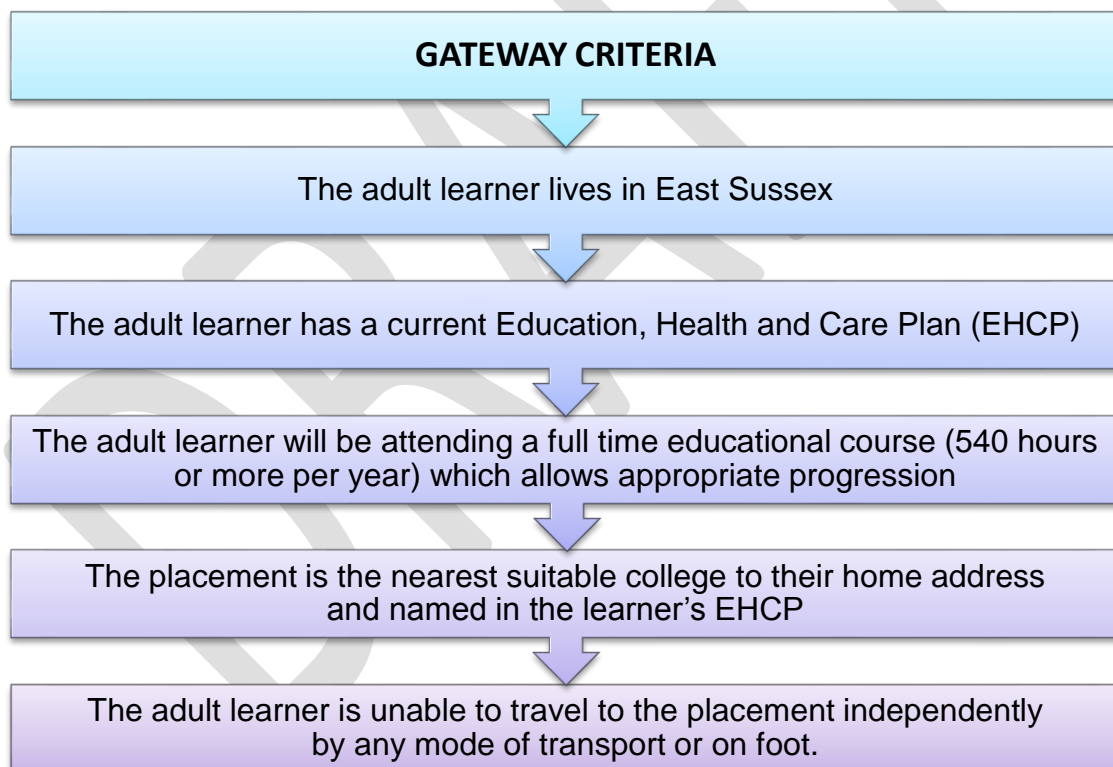
- 1.1. This policy explains East Sussex County Council's statutory responsibility in respect of travel assistance for adult learners. It states how to apply for the travel assistance and how their eligibility is determined and assessed.
- 1.2. Adult learners are those aged 19 and over who started their programme of learning after their 19th birthday and for whom an Education, Health and Care Plan is maintained.

2. Local authority responsibility

- 2.1. Statutory guidance states that if someone asks a council for transport assistance for a young adult over 19 years old it must assess their situation and decide whether to provide transport or financial support reasonably, taking into account all relevant matters. Councils are expected to target support at those who need it most. East Sussex County Council is committed to providing travel assistance to post 19 learners with SEND, when their SEND and circumstances mean that they could not otherwise access their placement.
- 2.2. The law concerning education transport is set out in the Education Act 1996. The Act divides children and young people into three groups: children of compulsory school age; young people of sixth form age; and adult learners. For adult learners, councils must 'make arrangements they consider necessary to facilitate their attendance'. Statutory Guidance 'Post-16 transport and travel support to education and training' (January 2019) 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.'
- 2.3. Section 508F of the Education Act 1996 requires local authorities to make transport arrangements they consider "necessary" to facilitate the attendance of relevant young adults (defined as adults for whom an EHC Plan is maintained) at institutions where the local authority has secured the provision of education for the adult learner concerned. 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)).

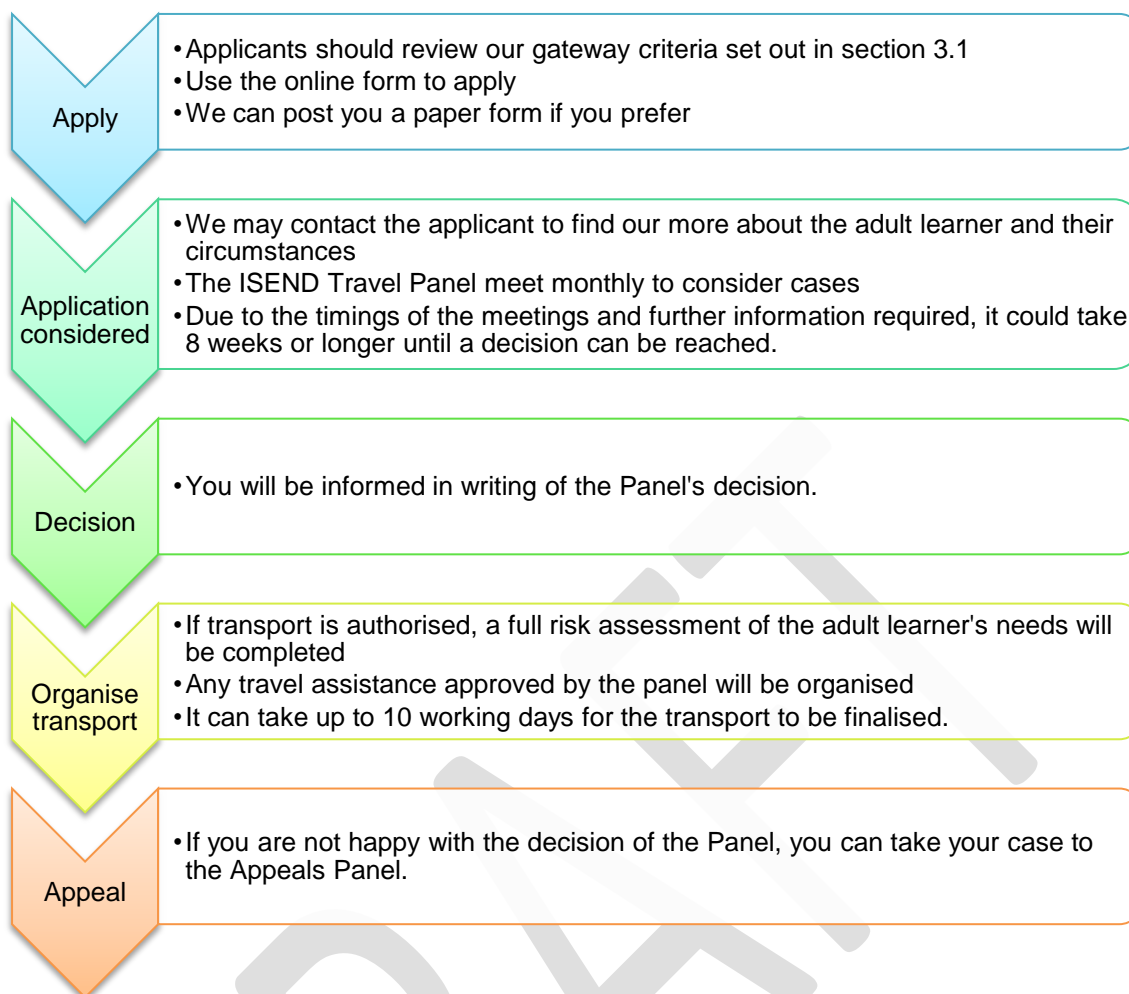
3. Criteria for travel assistance

- 3.1. The following gateway criteria must be met for an application for travel assistance to be considered.
- The adult learner lives in East Sussex;
 - The adult learner has a current Education, Health and Care Plan (EHCP);
 - The adult learner will be attending the equivalent of a full time education course (540 hours or more per year) which allows appropriate progression;
 - The placement is the nearest suitable college to their home address, unless agreed otherwise by East Sussex County Council, and named in the learner's EHCP;
 - The adult learner is unable to travel to the placement independently by any mode of transport or on foot.
- 3.2. If these gateway criteria are met, the Council will then consider the circumstances of the adult learner including any support their parent/carer and their broader network are able to provide, to assess whether it is necessary to provide transport for the adult learner.



4. How to apply

- 4.1. The most suitable and quickest way to make an application is online using the application form found in the following section of the East Sussex County Council website: www.eastsussex.gov.uk/SENDtravel. Alternatively we can post you a paper copy of the form if you would prefer.
- 4.2. A new application is required for everyone requesting post-19 travel assistance whether the adult learner is remaining in the same college or moving to a new place of learning. A new application is needed for each new course or placement.
- 4.3. Applications will be considered by the Council's ISEND Travel Panel which meets monthly. If the application fulfils the gateway criteria as set out in section 3, it will be reviewed and more information may be sought to help the ISEND Travel Panel make their decision. Information on how the decision is made can be found in the next section. It can take some time to reach a decision depending on the timing of the application and whether further information needs to be sought to make a decision. On average it could take 8 weeks for a decision to be communicated to the applicant.
- 4.4. The application needs to make clear whether or not the learner is living independently from their family and what support that family is able to offer in respect of travel to college. If the learner is living with family, the Panel will then use this information to decide if it is necessary to provide travel assistance.
- 4.5. Reimbursements for travel costs incurred before an application is approved will not be made.
- 4.6. If you are not happy with the decision of the Panel, you can take your case to the Appeals Panel. Further information on how to appeal can be found in section 9.
- 4.7. The following graphic provides more information on the application process.



5. How we make our decision

- 5.1. All applications will be assessed by the ISEND Travel Panel which consists of officers from across the Council. The members of the Panel will consider the individual circumstances of each case and will not apply blanket policies or make assumptions about accompaniment. Applications will be assessed on the basis of the evidence provided. The Panel will consider whether transport is necessary in each case. The Panel will use the information provided in the application, any other email correspondence with the Council in relation to the provision of transport as well as verbal representations made during phone calls.
- 5.2. In considering the eligibility of the adult learner to receive an offer and what offer should be made, the ISEND Travel Panel will consider the following and/or any other relevant factors:
- Nature of the journey for the adult learner for example, the distance, likely journey time, and complexity of the journey by road, public transport or on foot; whether the journey on foot or public transport could be reasonably made if the adult learner is accompanied.
 - Parent/carer/broader network ability to provide transport support, e.g. accompanying the learner on some journeys; transporting the learner on certain days.

- Available suitable vehicle and/or disability benefits for example, whether the adult learner has a suitable vehicle, which may include a Motability vehicle.
 - The adult learner's needs relating to travel for example, whether the adult learner has complex needs, and/or requires a second person on transport; if independent travel is a realistic goal.
 - Funding available for transport from the college and any other funds the learner can access; whether the adult learner is receiving PIP with the mobility component as a means securing independent travel.
 - The financial circumstances of the adult learner and potential impact of a declined application.
 - Advice from the college, for example, whether independent travel training is taking part as part of the programme.
 - Other relevant factors.
- 5.3. The following evidence may be required in addition to an application for travel assistance:
- Recent evidence from a relevant health and/or educational professional regarding the SEND of the adult learner and how this impacts on the need for travel assistance, their ability to walk or travel on public transport, accompanied or otherwise.
 - A copy of the care and support plan (if applicable).
 - Where the parent/carer is stated as being the primary carer/advocate for the adult learner, further evidence may be required regarding the support with transport (if any) they are able to provide and when.

6. What travel assistance could be provided

- 6.1. Adult learners will usually only be transported at published college start and finish times, and they may be expected to enable sharing with other adult learners through early arrival or delayed collection if safe to do so.
- 6.2. An offer of travel assistance may be part-week or involve a pick-up or drop-off point, i.e. not door to door. This will, however, be assessed on a case-by-case basis, depending on the adult learner's needs.
- 6.3. Travel assistance is not provided to work experience or dual placements, medical appointments or other off-site visits. Responsibility for these remains with the adult learner/parent/carer or school/college as appropriate
- 6.4. Travel assistance to respite is also discretionary and can be requested. The Council will separately consider requests for transport to respite under the same discretionary criteria, on term time days only. A charge may be made for transport to respite if approved.
- 6.5. If the adult learner attends a residential school and qualifies for travel assistance, this will only be provided at the start and end of each half-term or each week depending on the boarding arrangements. This will be made clear when the application is approved. We are unable to provide transport at other times or for parent/carer visits for meetings.

7. What happens if travel assistance is approved

- 7.1. The most suitable travel assistance for the adult learner will be assessed. This will be one of the following:
 - Personal travel budget
 - Independent travel training
 - Minibus or taxi.
- 7.2. Personal travel budget (PTB): An adult learner, parent or carer may be offered a PTB to provide financial assistance to organise transport to college. The amount is based on the distance of a return journey from home to the nearest suitable college and is paid in monthly instalments.
- 7.3. Independent travel training (ITT): ITT is the process by which a person learns to make a journey between two places on their own and in safety – in this case the two way journey between home and college. The training provides extra help or support to make journeys alone using public transport (and walking or cycling as necessary) when the adult learner has reached an appropriate age or stage of development. Adult learners will be considered for an assessment for their suitability for ITT and are expected to positively engage with ITT. As an adult learner progresses through the ITT, their requirements for travel assistance after training will be re-assessed.
- 7.4. Minibus or taxi: Where the Council will be providing the transport, the adult learner will be risk assessed for the provision of safe and suitable transport arrangements.

8. Right to appeal the decision

- 8.1. East Sussex County Council operates an appeal process for transport cases. Everyone has the right to appeal if they are unhappy with a decision not to provide travel assistance or the type of travel support being offered.
- 8.2. The Discretionary Transport Appeal Panel is made up of three elected County Councillors who will consider the original application and the appeal application form together with any supporting documents or information provided to the Council in relation to the application. The Panel will also consider all written and verbal representations from the adult learner/parent/carer and officers involved in the case that is provided before the deadline for the meeting. It is not, however, possible for adult learners/parents/carers to attend appeal panel meetings in person.
- 8.3. An application form needs to be completed to make an appeal. If the application makes reference to financial hardship, the financial section of the form needs to be completed in full.
- 8.4. More information about the appeals process as well as the form to request an appeal can be found on the school transport appeals webpage: <https://www.eastsussex.gov.uk/educationandlearning/schools/transport/free/school-transport-appeals/>

9. Ongoing provision of travel assistance

- 9.1. Travel assistance provided will be reviewed annually.
- 9.2. A new application must be made if the adult learner moves house or other circumstances change.

10. Other travel assistance available if application declined

- 10.1. Where it is decided that travel assistance will not be provided by the Council, the adult learner/parent/carer may consider applying for one of the following:
 - Mileage allowance
 - Vacant seat schemeBoth can be requested via our website at: www.eastsussex.gov.uk/SENDtravel
- 10.2. Mileage allowance: This scheme is available to low income parents/carers who have to travel long distances (over 10 miles) to transport an adult learner to the college indicated in their EHCP. The mileage allowance given will be 25p per mile for one return journey per day for the miles beyond the first 10 mile of the journey from home. For example, where the distance from home to college is 15 miles, the allowance given will be calculated as 2 journeys x 5 miles x 25p. Proof of attendance will be sought from the school/college. The following criteria must apply for claims for mileage allowance to be considered:
 - The family qualifies as low income using the same criteria for free schools eligibility. Further information can be found at: <https://www.eastsussex.gov.uk/educationandlearning/schools/school-life/meals/free/>
 - The adult learner is attending the college named in their EHC Plan
 - The journey exceeds 10 miles between home and college.
- 10.3. Vacant seat scheme: For some routes to colleges it is possible to apply to pay for a seat on a vehicle. The charge is currently £930 per year paid termly (reviewed annually). It may be necessary for the adult learner to get themselves or be taken to an existing stop. If a change is made to the shared route which means that the cost of the vacant seat increases, this increase may be passed onto the adult learner, or the offer of the vacant seat withdrawn. We will have to withdraw the vacant seat offer if we need the seat for someone else who qualifies for free transport or if we no longer have anyone on the route that qualify for free transport. The Council will give as much notice as possible however the minimum notice given will be one week.

11. Further notes about this policy

- 11.1. If East Sussex County Council makes any change to this policy which is assessed as likely to have an impact on current and prospective adult learners, the Council will inform the immediately affected adult learners at the earliest opportunity. Such changes may include, but are not limited to, changes required by the impact of further cost saving requirements placed upon the Council and further limitations on this discretionary support.
- 11.2. This policy can be found online at: <http://www.eastsussex.gov.uk/schooltransport>

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