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AGENDA

Committee	COUNCIL APPEALS COMMITTEE
Date and Time of Meeting	TUESDAY, 24 OCTOBER 2017, 11.00 AM
Venue	ROOM 263C - COUNTY HALL
Membership	Councillor Murphy (Chair) Councillors Goddard and Williams

*Time
approx.*

1 Apologies for Absence

To receive apologies for absence.

2 Declarations of Interest

To be made at the start of the agenda item in question, in accordance with the Members' Code of Conduct.

Exclusion of the Public

The Report and Appendices are confidential and are not for publication by virtue of paragraphs 12 and 21 of parts 4 and 5 of Schedule 12a of the Local Government Act 1972. The public will be excluded from the meeting for consideration of this item in accordance with the same legislation.

3	Case 1 - School Transport Appeal (<i>Pages 1 - 36</i>)	11.00 am
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Davina Fiore

Director Governance & Legal Services

Date: Wednesday, 18 October 2017

Contact: Andrea Redmond;

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This document is available in Welsh / Mae'r ddogfen hon ar gael yn Gymraeg

By virtue of paragraph(s) 12, 21 of Part(s) 4 and 5 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

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HOME TO SCHOOL/COLLEGE TRANSPORT POLICY

SEPTEMBER 2016



Cardiff Council
City Operations
Room 301,
County Hall,
Cardiff
CF10 4UW

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HOME TO SCHOOL/COLLEGE TRANSPORT POLICY

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APPENDIX 1

THE LEGISLATIVE REQUIREMENTS

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1. Legal Background

Cardiff Council has a duty to provide transport in accordance with the Learner Travel (Wales) Measure 2008. In deciding whether or not free transport should be provided, the Council is required to take into account:

- the age of the child,
- the nature of the route,
- a parental request that the child is educated at a faith school
- a parental request that the child is educated in Welsh,
- the needs of learners with disabilities or learning difficulties
- particular needs of learners who are children 'looked after' by a local authority.

This list is not exhaustive and the Council must consider each pupil's individual case on its merits, taking into account any representations made. (See '**The Legislative Requirements**' at the end of this policy document.)

The methods used by the Council to discharge this statutory function are set out in this policy document.

2. Choice of School

Parents are able to choose an English medium, Welsh medium or a denominational school for their child. The child will qualify for home to school transport to the appropriate catchment area school within the Cardiff Council boundary as long as the home address is more than the statutory walking distance from the school; (2 miles for a primary school pupil and 3 miles for a secondary school pupil). Parents who choose a school outside the catchment area school for their address are not normally entitled to free home to school transport.

Each address has four appropriate catchment area schools serving it. An English Medium Community School, a Welsh Medium Community School, a Church in Wales Voluntary Aided School and a Roman Catholic Voluntary Aided School. If parents choose to send their child to a school other than the appropriate catchment area school, the child does not generally have a right to free school transport, even if they live beyond the statutory walking distance.

When the catchment school is full and unable to admit a pupil, free transport/bus pass will be provided to the next nearest appropriate school that has room to take the child, as long as the home is 2 miles or more

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away from the school for primary school pupils, or 3 miles or more for secondary school pupils. Catchment areas are continually reviewed and changed as a result of demand and demographic changes. The appropriate catchment area school for the pupil is dependant upon the age of the child and their home address at the time of application.

3. Nursery Children

The Council does not normally provide free transport for part-time Nursery pupils. Transport is provided for pupils with a statement of Special Educational Needs (SEN) in very exceptional circumstances.

4. Primary School Pupils

There is a statutory legal obligation on the Council to provide free home to school transport to primary school pupils who live 2 miles or more from the appropriate catchment area school, as measured by the shortest available walking route.

In circumstances where the catchment area school is full, free transport will be given to the next nearest appropriate school that has a place available, provided the home address is 2 miles or more from the school as measured by the shortest available walking route. However, transport is not provided in this situation where the appropriate catchment area school was available on the date of the application for a school place (or on the published deadline in the case of the Reception Year Group) and, for whatever reason, the parent/guardian chose not to apply for/accept a place at that time.

Escorts are provided on all primary school bus services, but not in taxi vehicles.

5. Secondary School Pupils

There is a statutory legal obligation on the Council to provide free home to school transport to secondary school pupils who live 3 miles or more from the appropriate catchment area school, as measured by the shortest available walking route.

In circumstances where the catchment area school is full, free transport will be given to the next nearest appropriate school that has a place available, provided the home address is 3 miles or more from the school as measured by the shortest available walking route. However, transport is not provided in this situation where the appropriate catchment area

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school was available at the time of application for a school place and, for whatever reason, the parent/guardian chose not to apply for/accept a place at that time.

Escorts are not provided on secondary school transport (minibus, buses or taxis).

6. Home Address

Free transport is normally provided to/from a pupil's sole permanent address.

Where parents/guardians have shared responsibility for a child and the child is permanently resident at more than one address, the Council will provide transport from both home addresses, as long as they are both in the catchment area for the school concerned and are located over the required qualifying walking distance. In such cases, a fixed schedule is agreed, normally on a half termly basis, whereby the home address is confirmed for each day of the week. **Documentary evidence such as a court order will also be required to support the use of more than one address.**

In cases where a pupil is resident in a temporary address, through actions beyond the parents control and where it is proved that the pupil/parent was in danger of physical harm and the perpetrator will likely end up being prosecuted eg victims of sexual, domestic abuse, this address will be considered as their address for transport purposes. **Documentary evidence from an official dealing with the case such as a police officer, social worker will be required to support the use of a temporary address.** Transport will be provided whilst the pupil concerned is resident at the temporary address, provided the necessary transport eligibility conditions are met. Transport will be given for a minimum period of one term and a maximum period of one academic year, this being dependent as to the date on which the application was approved.

7. Changing Address during Year 10/11

Pupils studying for their GCSE examinations in year 10 or 11 who change address after commencing their studies in Year 10, will be entitled to free school transport (usually in the form of a bus pass) providing the new address is over 3 miles walking distance from their current school. Pupils moving to an address in Wales outside the boundary of the City of Cardiff will be eligible to receive transport from the Council concerned (subject to the current agreements between Welsh Councils remaining in place).

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It should be noted that:

- The current school must be the appropriate catchment area school for the previous home address.
- Documentary evidence of the new address will be required.
- If the previous address is outside the catchment area for the current school, attendance at the school will be classed as parental choice and parents will be responsible for any transport costs for the new school.

A check of the address history for the pupil will be undertaken to ensure that the previous home address is in the catchment area of the current school. If the address history shows an address outside the catchment area, transport will not be provided, regardless of the distance from the new address to the school.

8. New Schools

When a new school opens with a newly defined catchment area, free transport will not be provided for those children whose parents choose to opt for a place at the school previously serving their place of residence. The appropriate catchment area school for the pupil is dependent upon the age of the child and their home address at the time of application.

9. Post 16 Transport

The Council has agreed to the phased withdrawal of free home to school transport via the Councils Passport to Travel Scheme for post 16 pupils/students with effect from the 2016/2017 academic year. Funding will continue for all pupils/students currently in receipt of the Passport to Travel Grant for the remainder of their course of study until they reach the age of 19 years, provided eligibility conditions continue to be met.

10. Medical Conditions

The Council has no statutory requirement to provide transport on medical grounds. The only exception is in the case of pupils with a statement of special educational needs. No discretionary transport is provided to pupils on medical grounds whether a child has a temporary medical problem or a long-term medical problem. Pupils who have a medical condition which makes it difficult to attend school should apply for Home Tuition.

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11. Special Educational Needs (SEN) Transport Policy

Free transport is provided to pupils who meet the mainstream distance criteria and hold a current statement for Special Educational Needs (SEN). The SEN transport policy has the same distance criteria as the mainstream transport policy applying the cognitive age of the child when assessing the qualifying distance. The appropriate catchment school is determined by the type of special educational need and the nearest available school which can support the type of need. (If parents choose a school other than the school named by the Council in the draft statement of special educational needs, it is their responsibility to pay for any transport costs incurred.)

Transport is given to pupils with a statement of Special Educational Needs not meeting the mainstream distance criteria, only in very exceptional circumstances. Exceptional circumstances would not include solely social reasons eg where there are siblings in more than one school.

12. Length of Journey

Where possible, the Council adheres to Transport guidelines issued by Welsh Government. This allows for a maximum 60 minute journey time for secondary school pupils, and a maximum 45 minute journey time for primary school pupils. A walk of 1 mile to the bus stop is deemed to be reasonable.

13. Available Routes

Over the years the Courts have interpreted a route as “available” if a child, accompanied if necessary, can walk along it with reasonable safety to school. The Council can only take into account issues relating to road safety and not perceived social dangers. It is the parent’s responsibility to accompany the child as they see appropriate in order for the child to arrive safely at school.

14. Unavailable Routes

The Council has deemed certain routes to several schools to be “unavailable” by designating them as “unsafe” walking routes. This designation commits the Council to the provision of free home to school transport.

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15. Sale of Surplus Seats

Where spare seats arise on an existing route, they can be offered for sale. Application forms are available on request from the Passenger Transport Team or from the Council's web site. If the number of application forms received exceeds the number of spare seats available for a particular route, the pupils living furthest away within the catchment area will be given priority.

There is no guarantee of the continued availability of a surplus seat. If the number of pupils entitled to free transport increases, it may become necessary to displace pupils who have purchased spare seats. In these circumstances families may be entitled to refunds according to set criteria.

Charges for spare seats are reviewed annually and are payable following receipt of an invoice. Seats are sold on a return journey basis and cannot be sold for one way either to school or home from school. Parents are able to pay in full, on a monthly or on a termly basis. Schools are advised of the charges for the following academic year in the preceding summer term.

16. Use of Service Buses

It is for the Council to determine the means of travel between home and school. For reasons of cost effectiveness, local bus service buses are sometimes used for children who are eligible for school transport.

17. Changing Buses

Pupils may be expected to change vehicles to complete their journey to/from school.

18. Travel Expenses

Where an entitlement to free transport exists, the Council may offer travel expenses to parents willing to drive their child to and from school. The claim form and current rate for the refund of expenses is available from the Passenger Transport Team, the rate reviewed on an annual basis. Reimbursement is calculated on the basis of one return journey, the measurement being carried out by the Council. Once completed the form is certified by the school and submitted to the Passenger Transport Team.

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19. Measuring the Home to School Route

The walking route is measured from the boundary of the family’s property to the nearest entrance of the school site as determined by the Council’s GIS mapping system. Where the distance given is disputed, parents can request a manual re-measurement of the home to school route used by the Council. Parents will be allowed to walk the route with a Council officer and will be provided with a detailed written breakdown of the route taken and the distance measured.

20. Bus Passes

All pupils in receipt of free school transport will be issued with a colour coded photo ID bus pass to travel on a school contracted bus, or on a fare paying school bus service. In cases where there is no dedicated school bus, the pupil is issued with a Cardiff Bus iff card.

Pupils are instructed to carry the pass/card at all times when they travel. To avoid potential overloading, bus companies and drivers are instructed not to let any pupil travel who does not have an appropriate pass/card to travel (No Pass No Travel). Council officers will undertake monitoring surveys on a regular basis to ensure only eligible pupils are being conveyed.

In the event that the number of applications received exceeds the number of seats available, priority will be given to pupils in Years 7 to 11 before consideration is given to applications from sixth form pupils. Places will be allocated on the basis of distance from a pupil’s home address to the school. Priority will be given to children living furthest away from the school. Applications will be treated on a first come, first served basis for any remaining seats.

Pupils mislaying their bus pass/card can obtain a temporary pass from the school whilst a replacement is arranged, at a small cost, by the Passenger Transport Team.

21. Right to Withdraw Transport

If it is subsequently found that free transport has been provided in error, e.g. where an incorrect measurement has been taken, the Council has the right to withdraw the transport subject to reasonable notice (normally within 10 working days of the error being discovered).

Where circumstances have changed with the route measurement during an academic year, eg following a review of transport provision where new

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footpaths are provided, the Council has the right to withdraw free transport at the end of the academic year concerned.

In cases where a pass has been purchased for a spare seat that is no longer available, (for example where the seat is required by a pupil/student eligible for free travel or the contract is terminated) the pass will be stopped immediately. In such cases an appropriate refund will be made.

22. Behavioural Problems

The safety of all pupils is dependent on the standard of behaviour on school transport. If a pupil persistently misbehaves on school transport the Council reserves the right to withdraw the transport provision. Warning letters will be sent to the families of pupils who misbehave, cause damage to the vehicle, cause injury to other passengers or who behave in such a way that might jeopardise safety. The right to travel on the school bus may be withdrawn on a temporary or permanent basis.

The Council also retains the right to either suspend or cancel transport in cases where drivers/escorts have received verbal or physical assault from parents /guardians. In such cases the contractors concerned will be encouraged to report such actions to the necessary authorities.

Parents have the right to put forward representations in writing to the Director of City Operations as to why transport should not be temporarily/permanently withdrawn. Following the withdrawal of the right to travel on a school bus, parents are responsible for ensuring that their child gets to school. Before a temporary ban is lifted an assurance of improved behaviour is required.

23. Bullying

In cases where a child has to move schools due to bullying, free home to school transport will only be provided where the Education Welfare Service (EWO) or Cardiff Against Bullying (CAB) have had involvement and assisted with the school transfer.

Evidence will need to be provided by the EWO or CAB team/officer to support the request for transport. Pupils will also have to live over the qualifying walking distances from their new school.

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24. Complaints Process

Only complaints from parents received in writing by the Council concerning services or vehicles will be investigated. In the event of a complaint being upheld, if needed, necessary and appropriate steps will be taken up with the service provider concerned as a matter of urgency, in accordance with the contract conditions in force at the time.

25. Appeals Process

Where applications for assistance for free home to school transport are refused parents/guardians have the right to make an application to appeal against the decision. There are three stages of appeal.

Stage 1

In the first instance parents should put in writing the details of an appeal with any supporting evidence. The onus will be on parents to collate all relevant evidence. This appeal should be sent either by letter or email to the Passenger Transport Team. Confirmation of receipt of the appeal will be sent to the parent within 5 working days and a formal response will be sent to the parent within 30 working days on any decision.

Stage 2

If the parent/guardian is not satisfied by the decision of the Passenger Transport Team, an appeal can be made in writing to the Director of City Operations. Confirmation of receipt of this second appeal will be sent to the parent within 5 working days. The Director of City Operations will provide a formal response within 30 working days. Each case will be judged on its merits against the Council's Home to School/College Transport Policy.

Stage 3

Where the application has been refused by the Director of City Operations, the parent/guardian has one final course of appeal. The appeal must be put in writing to Committee & Member Services. Confirmation of receipt of this final appeal will be sent to parents within 5 working days and a hearing date set within 30 days. This appeal will be considered by the Council Appeals Committee. The Committee consists of elected members none of whom have a connection with the Passenger

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Transport Team. The Committee will consider applications for assistance with transport that fall outside of the normal policy for the provision of school transport. The Committee is able to exercise the discretion available to it and the decision is final and binding on both appellant and the School Transport Team. Parents will be notified of the Committee's decision within 7 days of the appeal hearing. If the appeal is rejected the parent/guardian will be advised that there is no further right of appeal.

APPENDIX 1

THE LEGISLATIVE REQUIREMENTS

1. The legal responsibility for ensuring a child attends school rests with the child's parent/guardian. However, the local authority is given both statutory duties and discretionary powers to provide transport under the Learner Travel Wales Measure (2008). The Measure requires the local authority to decide whether or not the local authority needs to make arrangements for the provision of transport for the purpose of facilitating the attendance of persons receiving education:
 - (a) at schools or units
 - (b) at any institution maintained or assisted by the local authority which provides further education or higher education (or both), or
 - (c) at any institution within the further education sector.

2. If transport is considered necessary, the local authority will then consider what form of transport is required. This provision must be provided free of charge.

3. The Measure gives the local authority discretion to pay in whole or in part, the reasonable travelling expenses of any learner for whom no free transport arrangements have been made under the Measure.

4. It is up to the local authority to decide what is necessary in the case of each child, but the Measure provides some of the factors to which the local authority shall have regard to in determining whether or not to make arrangements for the provision of transport. These include:
 - (a) the age of the person and the nature of the route, or alternative routes, which he/she could reasonably be expected to take;

 - (b) any wish of the parent for the child to be provided with education or training at a school or institution in which the religious education

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provided is that of the religion or denomination to which the child's parent adheres.

- (c) any wish of the parent for the child to be provided with education in Welsh;
- (d) the needs of disabled learners or learners with learning difficulties;
- (e) any particular needs of learners who are children 'looked after' by a local authority.

This list is not exhaustive and is not intended to define all the circumstances in which it might be necessary to provide transport, nor does it lay down the weight which a local authority is required to give to any particular factor. That is a matter for the discretion of the local authority. The local authority must consider each pupil's particular circumstance on its own merits, taking account of any representations made. In assessing the travel needs of learners, local authorities must take into account the fact that the travel arrangements they make in light of the assessment must not cause unreasonable levels of stress, take an unreasonable amount of time or be unsafe.

- 5. It will be considered necessary to provide transport where a child aged 5-16 years old has to travel beyond walking distance and the local authority is unable to make arrangements for the child to become a pupil at a school nearer to his/her home which offers education suitable to his/her needs, including any special educational needs he/she may have.

The walking distance is measured by the 'shortest available route'. A route is considered 'available' if it is safe for a child without a disability or learning difficulty to walk the route alone or with an escort, if the age of the child would call for an escort.

The Measure defines 'walking distance' as:

- (a) 2 miles (3.21 kilometres), for a primary school child and
- (b) 3 miles (4.82 kilometres) for a secondary school child.

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