



## CHALLENGING SCHOOL TRANSPORT POLICIES – ENGLAND

The provision of home to school transport is governed by law, statutory guidance and local authorities' own policies. Local policies must offer at least the minimum legal entitlement. However, research as part of Contact's school transport campaign has shown that a number of policies do not comply with the law. We are also aware of parent groups who have successfully challenged potentially unlawful policies when they have been put out for consultation.

### WHAT THIS FACTSHEET WILL TELL YOU

This factsheet will be useful to parent groups and individual parents who want to challenge a local school transport policy. It will help you understand:

- **local authorities' duties with regard to transport policies**
- **the need for a fair consultation**
- **common issues on which a policy could be challenged.**

For more details on transport eligibility see our factsheet on **Home to school transport**.

- **explain both statutory transport provision and that provided on a discretionary basis**
- **set out the appeal process.**

The law does not say how or when the local authority should consult on transport policies for this age group. However, *Home-to-school travel and transport* guidance recommends that local authorities consult widely on any changes to their school transport policy with all interested parties for at least 28 days during term time.

### YOUNG PEOPLE OF SIXTH FORM AGE (16-18)

Under section 509AA of the *Education Act 1996*, the local authority must publish a transport policy statement for 16-18-year-olds. This must be published by 31 May to take effect the next academic year (from September). Local authorities must have regard to statutory guidance (*Post-16 transport to education and training*) when they draw up their local policy for this age group. There are legal requirements detailing who must be involved in the consultation including young people and their parents.

### YOUNG ADULTS (18-24-YEAR-OLDS WITH AN EHC PLAN)

Under section 508G of the *Education Act 1996*, the local authority must publish a transport policy statement for 'relevant young adults' who are entitled to transport under the adult transport duty. Relevant young adults are defined as those under 25 with an EHC plan (the guidance however still uses the old terminology 'subject to learning difficulty assessment'). The policy must be published by 31 May to take effect the next academic year. There are legal requirements for who must be involved in the consultation, including relevant young adults and their parents.

### CHILDREN OF STATUTORY SCHOOL AGE (5-16)

The local authority must publish its school transport policy under the *Education (School Information) (England) Regulations*. This must form part of the composite prospectus published annually for school admissions in the following year. The composite prospectus must be published by 12 September in the year before admission.

Statutory guidance from the Department for Education – *Home-to-school travel and transport guidance* – states that the information should:

- **be clear and easy to understand**
- **give full information on travel and transport arrangements**

Many local authorities consult on all age groups as part of the same consultation.

## LOCAL OFFER

Details of transport for children and young people with special educational needs and disabilities (SEND) must also be published as part of the local offer under schedule 2 paragraph 14 of the *Special Educational Needs and Disability Regulations 2014*.

## CONSULTATIONS

A formal consultation is when a public body, such as a local authority, seeks the views of stakeholders on a new policy, a proposed change to eligibility criteria, or other policy changes.

The general principles of consultation have been established in the courts by case law; the consultation must be proportionate and fair. In particular:

- ***consultation should happen when proposals are still being developed. It should be possible to change proposals in light of the consultation***
- ***stakeholders must be given enough reasons for the proposals to allow them to make an informed response***
- ***stakeholders must have adequate time to consider and respond to the proposals***
- ***the outcome of the consultation should be taken into account.***


Case law has also established that the demands of fairness will be higher when stakeholders will lose an existing service or benefit. This would apply to cuts in school transport services.

It may be possible to mount a legal challenge via judicial review if a consultation has not been carried out fairly. You should seek legal advice if you are considering this step.



## FIND OUT MORE

There is more information on consultations in ***Disabled Children – a legal handbook*** by Steve Broach et al at paragraph 2.9. A free download is on the Council for Disabled Children's website at:

 [www.councilfordisabledchildren.org.uk/legal-handbook](http://www.councilfordisabledchildren.org.uk/legal-handbook)

## COMMON ISSUES THAT ARISE

Through looking at actual and proposed transport policies, Contact is aware of the following unlawful or potentially unlawful aspects:

### Inadequate consultation

Lack of time, or affected parties not adequately consulted, for instance where families were not made aware of the changes or response was limited to an online questionnaire.

### Inadequate policies

Transport policies do not comply with the recommendations set out in statutory guidance. Common issues are:

- ***the policy is difficult to understand for the average parent***
- ***the policy does not include all eligibility criteria, for example children with SEND or mobility difficulties***
- ***there is limited information on how to apply or appeal.***

### Blanket policies which restrict eligibility

Some local authorities have blanket policies which limit eligibility to children with SEND who:

- ***live outside the statutory walking distance***
- ***have an EHC plan, or one that specifies transport arrangements***
- ***attend out-of-authority schools***
- ***attend special schools***
- ***have physical/medical difficulties only.***

Such policies are not lawful. Children of compulsory school age who cannot reasonably be expected to walk to school because of a special educational need, disability or mobility difficulty are eligible for transport under section 508B and schedule 35B(2) of the *Education Act 1996*.

The policy should explain how a child with SEND meets the criterion for school transport.

Local authorities are only obliged to provide transport to the nearest suitable school and can refuse transport if parents choose a school further away. To be considered 'suitable', a school must be right for the child's age, ability and aptitude, as well as being able to meet their special educational needs. The policy should explain this.

### Requiring parent to arrange transport

Some local authorities have policies which:

- ***require families to have a mileage allowance or individual travel budget***
- ***require families with a motability car to drive their children to school***
- ***require families getting the high rate mobility component to use that to pay for school travel.***

This is unlawful. The local authority must provide free travel arrangements for eligible children of compulsory school age. Mileage allowances or use of the parental car can only be with parents' consent (section 508B(4) (b) of the *Education Act 1996*).

## Equality issues

Local authorities must comply with the public sector equality duty under the Equality Act 2010. They must consider the potential effect of their transport policy on disabled people, both disabled children and disabled parents. Equality issues may relate to:

- **travel passes and bus routes**
- **children and young people below and above compulsory school age**
- **the ability of disabled parents to accompany a child on a walking route.**

## Under FIVES

There is no legal obligation to provide free transport for the under fives, but a blanket refusal could be discriminatory. For example, if a four-year-old attends special school at a distance from home and would not be able to access education without transport.

## Travel training

It is reasonable to ask parents and young people to consider travel training, but it should not be a blanket policy. It should be based on an individual assessment and tailored to the young person's needs. Some young people may never manage independent or supported travel by public transport. There may be issues in rural areas if times of courses for young people with SEND don't fit in with bus times.

## No door-to-door transport

Some local authorities are now expecting parents to take children to pick up points instead of being collected from the home address. This is legal but should be based on individual assessments, not a blanket policy. Local authorities have a duty to provide 'non-stressful' transport arrangements.

## Charging for young people of 6th form age

This is lawful but the local authority should avoid indirect discrimination. For example, will the

contribution be set at a similar level to that of a bus pass for non-disabled students? The local authority should also take into account that students with SEND may have to travel further to a suitable course.

## TAKING ACTION

Here are things you can do to have your say on school transport policies in your area:

- **check the Local Offer section of your local authority website for proposed changes to transport policies**
- **respond to consultations when the opportunity arises**
- **if you think there is something wrong with an existing transport policy, make a formal complaint to your local authority**
- **contact the education team on our helpline for further advice if you need to.**

If you need advice about your son or daughter's transport to school or college, look at our section on school transport and call our helpline to talk to one of our advisers.

 **0808 808 3555**  **helpline@contact.org.uk**



## FIND OUT MORE

### Legal guidance

There are two documents outlining the legal guidance, one for school age children and one for post-16s:

- **Home-to-school travel and transport guidance**
- **Post-16 transport to education and training**

Find them by searching for the title at:

 **www.gov.uk**

### Other resources

The Council for Disabled Children produce a factsheet:

 **Independent Support factsheet on consultations**

Barrister Steve Broach has written a blog post on fair consultations:

 **www.rightsinreality.wordpress.com/duty-to-consult**



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