

## **BUSINESS SUPPORT OVERVIEW AND SCRUTINY COMMITTEE**

**5 DECEMBER 2013**

### **SPECIAL EDUCATIONAL NEEDS TRANSPORT BUDGET**

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#### **Summary**

There is a significant overspend forecast on the Special Educational Needs (SEN) transport cost centre. There is a statutory duty to provide home to school transport free of charge to pupils whose special educational needs require that we do so. The policy that Medway Council adopted in 2012 has clearly defined criteria and builds in review processes. This is a demand led service with statutory eligibility set nationally.

#### **1. Budget and Policy Framework**

1.1 The Local Authority has a statutory duty to support the transportation of children with Special Educational Needs to school where they meet set criteria.

#### **2. Background and context**

2.1 Demographic information indicates that transport costs will rise. The numbers of pupils moving into Medway is increasing. As we have implemented a new transport policy rigorously and have reduced the number of existing children eligible, savings have been offset by the new children moving into the area.

2.2 Over the last two years, each year, approximately 70 new children and young people with very complex needs have moved into Medway. These children already have statements in place and have needs that mean the Council must legally put in place free transport support.

2.3 The statutory leaving age is rising. This is referred to as 'raising the participation age' or RPA. This is the first year that young people must remain in some form of education until 17; next year it rises again to 18.

- 2.4 Statements of special educational need used to be 'ceased' for students attending college. With the raising of the participation age, pupils who would have left school to attend college or do nothing may now remain in school. If the statement continues then they may continue to be eligible for funded transport.
- 2.5 The special educational needs statutory framework is changing. Instead of complex children having a "statement of special educational needs" they will have an ongoing "Education Health and Care Plan" EHC. Statements automatically ceased when a young person reached their 19<sup>th</sup> birthday. An EHC can be in place until that young person is 25.

### **3. Statutory duties – transport and SEN**

- 3.1 Councils have responsibility to provide free transport support for children under eight with SEN attending their nearest appropriate school if that school is over two miles from their home. The same applies if the distance is less than two miles and the child could not be reasonably expected to walk – either because the route is unsafe or as a result of their particular needs ie their SEN.
- 3.2 The distance criteria is three miles for children and young people over eight years – but again, if their needs mean they cannot reasonably be expected to walk, the Council must fund transport.
- 3.3 Families on low incomes have different criteria and the local authority has to fund transport for their children with SEN if the school is further than two miles away regardless of age.
- 3.4 The SEN transport budget is provided to pay for the support that children with special educational needs have to enable them to travel to school as per the statutory duty. The same budget pays for transport to and from "respite" care.

### **4 Policy**

- 4.1 The local authority is required to have a policy that sets out how it delivers against the statutory duty to provide free transport to school for children and young people with SEN. Medway revised its policy last year to:
- be more rigorous in application of the eligibility criteria
  - ensure that the policy was compliant with legislative changes
  - explicitly change the assumption that transport meant individual taxis
  - introduce the ability to use pick up points rather than door to door collection
  - highlight the use of personal budgets
  - high cost individual routes would be prioritised for personal budgets
  - older children (in mainstream schools) would be gradually expected to complete travel training and use buses (rather than have a taxi)

- the Transport Procurement Unit (TPU) would use larger vehicles, reducing the number of routes, and pick up points would begin to be introduced
- review points would be built in and transport would not be automatic

4.2 Implementing the policy has reduced the number of children with statements of SEN eligible for support. Transport has been ceased for some students and there is no 'automatic entitlement'. All requests are assessed against the statutory eligibility. An appeals process is now in place. However, parents are able to make an application for a judicial review or complain to the Local Government Ombudsman if they believe the Council to have refused an eligible child.

## **5 Learning from other Councils and from actions taken**

- 5.1 Medway has been seeking to limit and bring down the overall SEN transport costs. The SEN Assessment Manager and colleagues from the Transport Procurement Unit have been linked into the group of Southern local authorities, known as SE7, to see what lessons can be learnt from them. Some of this informed the new Medway policy.
- 5.2 Additionally, contact was made with a Council who had significantly reduced their spend. Analysis of this showed that changes had already been implemented in Medway over time (such as regularly re procuring routes, challenging high cost individual transport and reviewing decisions). The residual actions were modelled and it was concluded that these could put our costs up.
- 5.3 The geography of Medway has been a limiting factor in reducing route costs. This is due to the urban/rural mix and the river. Bus routes are not as conducive to home school transport here as they are in other urban areas.
- 5.4 Medway has maintained it's spend over a number of years while other areas have seen year on year rises. Where costs have come down in other local authorities, Medway had already been implementing the actions.
- 5.5 Other ways of decreasing costs have been explored such as increasing the bus sizes. An unintended consequence of this is that journey times increase.
- 5.6 The Council is not supposed to have children sitting on transport for journeys in excess of an hour and fifteen minutes. Where increased journey time would result in young children with disabilities on transport for an unacceptably long time, smaller units of transport have needed to be reinstated. This limited the ability to make savings through the use of larger vehicles.

## **6 Historical costs and numbers**

- 6.1 The SEN transport budget is affected by two distinct elements. The first is the number of children being transported, the second is the daily rate agreed through the procurement of the transport.
- 6.2 The outturn budget has remained largely static since 2011. The average routes have reduced and the number of pupils in transport has reduced. However, this year for the first time there has been a steady month on month increase in charge which accounts for the overspend.

## **7. Why is there a gap between budget and spend?**

- 7.1 The 2012 procurement exercise saved £660,000 in the bundle of routes being retendered. The budget was reduced accordingly.
- 7.2 The retendered routes are generally cheaper but throughout the year there are changes as new children meet statutory requirements and new routes are required. Where possible children new to Medway/new statements are placed on existing routes at no additional cost, or minimal cost. Children who cannot be accommodated are placed on new routes spot purchased through an existing "framework". These new routes and adjustments to existing routes carry an additional cost, and are statutory duties we must meet if a child is eligible for transport. Overall, previous retender processes have demonstrated that by the end of the academic year the savings on August retenders can be cancelled out. Even re-tendered routes may "cease" if children move out of Medway or a child's needs change.
- 7.3 Year on year, the outturn budget has been relatively static showing that regular re-procurement of routes has held costs down.
- 7.4 Only a proportion of routes are retendered annually. The daily cost of SEN transport has increased between June 2012 and June 2013, to create an unprecedented annual increase leading to the overspend. Additional cost pressure is a result of rising charges from the providers.
- 7.5 Tracking of costs shows that there have been more increases in cost than decreases as routes change, which has been static in previous years.
- 7.6 Operators report that whilst they are aware they were still competing for routes by price against other operators, they now find it hard to maintain the pricing they have been using for the last few years due to increases in costs (petrol, staffing, insurances, yard rental etc). This is why the daily charge from providers has risen, thus pushing up our costs.
- 7.7 This was the first year that increases from providers began to show in the tenders. Prices have been compared from an SEN transport tender in 2004, where costs for some routes are still comparable with costs submitted last year.
- 7.8 It is clear from Operators that short term contracts, such as the 12 month contracts tendered in summer 2012, has a negative impact on

pricing, with operators quoting higher costs due to the limited time they will be awarded the contract for. Anticipating that the Council were now moving towards short-term contracts following the summer 2012 tender process, operators may have increased their pricing to offset this.

## **8. Integrity in the system**

8.1 The Council was faced with, and continues to face difficult budget decisions in light of reduced resources. SEN transport is a statutory service. It is complex due to the demand side being based on individual pupils and there has been a higher than usual fluctuation of numbers changing over the past year. A whole council approach is needed as the procurement and TPU and statutory responsibility sits across different parts of the council. Officers have sought to work together on this.

8.2 The procurement process was indicating that savings could be made on the routes for which new contracts were being awarded. However routes change between the contracts being awarded and as the academic year progresses because children come into and out of the system. Additionally, it must be remembered that only a proportion of routes are retendered each year.

## **9. Future costs**

9.1 Demographic information indicates that transport costs will rise.

9.2 Raising of the participation age means that students who left school at 16, and whose statement lapsed, will now remain in school until 17 and then until 18. This will be for the minority rather than majority since the children with the most complex needs attending our special schools have always remained in post 16 education and are not a pressure on the system. The estimate is that there will be an additional 148 pupils eligible for transport due to RPA in 2014-2015 at a cost of £96,000.

9.3 There is no reason to suppose the inward mobility to Medway of students will change. This represents a further 70 pupils per year with statements in addition to the existing number. On the existing average daily cost, this would add £321,000. However this is simplistic as there will be some routes that absorb new students at no extra costs and for others, additional routes would need to be added and each route has a different actual cost.

9.4 In response to a national requirement, part of the pupil referral unit (PRU) is destined to become a school. Currently PRU and tuition students have their transport funded from the DSG rather than the general fund. As soon as this is a school the costs will transfer to the general fund – currently an additional 40 pupils. Officers are working with the provision so that they develop their own transport to contain this budget.

9.5 These increases in pupils that we are responsible for are estimated to potentially add a further £500,000 to the transport costs for next financial year. Greater accuracy in forecast will be possible once actual pupils, destinations and routes are known. However, the nature of a

demand led service with inward movement to Medway throughout the year means that the forecast will be imprecise.

## **10. Action to mitigate and limit the rise in cost**

- 10.1 In January 2013 work commenced on a new strategy for commissioning SEN transport. The proposal to place all SEN transport with one large operator was rejected due to the risks of placing the entire service with one company. In addition, having consulted with the two largest transport operators in the area (Arriva and ASD) they were not confident they would be able to take the service on and run it to the required standard, or at an annual cost that is less than current spend. Therefore, it was proposed to reduce the number of contracts by awarding a single contract for each school site (or group of school sites where practical) to one operator. This operator will carry out all transport to that school(s) for a set annual cost, absorbing passenger increases and decreases within a 25% tolerance. This strategy would reduce the number of contracts, and improve working relationships between the operators and school, and importantly, allow accurate budget setting.
- 10.2 It is also anticipated that cost savings might be achieved by the economies of scale offered by one operator carrying out all of a school's required transport. To test the proposal, a paper exercise was carried out in June 2013 with all current operators. Operators were asked to plan and price routes to three Medway school sites. Of the three sites, all three had effective routes planned for, while two of the three sites had total daily rates cheaper than our current spend.
- 10.3 In order to move forward with this new strategy, existing contracts/routes ending in July 2013 have been granted extensions to 2015, with operators asked to adjust their pricing for the opportunity of having their contracts extended; this did achieve a limited saving with operators reducing their daily rates slightly. The Framework will also still be utilised to cover ad-hoc requirements for new routes.
- 10.4 For the summer 2013 changes, officers worked with operators to accommodate new passengers on existing routes for no additional cost where possible. Some additional costs were required and a small number of new routes tendered from the Framework. Officers have now calculated that this has achieved a saving of approximately £120,000.
- 10.5 The proposal going forward is to tender two "lots" in September 2013 (lot one for pilot school sites - Warren Wood, Rivermead, and Brompton Academy – lot two, a single contract for operating respite transport, and a single contract for operating 'Write Trak' home tutoring transport). The school sites were chosen after taking into account end dates for existing contracts/routes to the schools, and by choosing sites comparable with the sites that achieved a successful result in the route planning exercise referred to in point 7.2 above.
- 10.6 For lot one, the school sites will be operated for a set annual cost, with the operator managing changes in passenger numbers and requirements within this cost, to a 25% tolerance in numbers. For lot

two, an agreed matrix of costs will be utilised to better manage transport costs for respite and 'Write Trak'. Officers also believe that a single operator per school site will create a better quality of service delivery and improved communication between the school and their operator. Having consulted with a number of proposed school sites, the proposal has so far been well received. These new contracts will commence in April 2014, to be reviewed over summer 2014. If the pilots are successful in terms of cost efficiencies and improvements to service provision, this new commissioning strategy will be introduced by a phased approach across all schools in Medway who receive SEN transport.

- 10.7 As new routes to other school sites are calculated, costs are being modelled using pick up points and where these are cost effective they will be introduced (as per the new policy).
- 10.8 Over the last year where a route is high cost to the LA a personal budget has been offered. This piece of work is being continued with additional support proposed for the parents in terms of understanding how the personal budget can be used alongside other budgets such as disability living allowance. Over the next few weeks the local authority will be contacting parents and explaining about personal budgets, which may lead to an increased uptake. There are currently 38 children taking up personal budgets.
- 10.9 Independent travel was set out as an aim in the new policy. Medway Youth Trust has developed a travel-training programme (the first pupils are going to start to be trained from September/October 2013 onwards). The cost is £12.50 per hour, plus travel fares for the pupil and trainer. Training will be tailored to the pupil. The cost for each pupil will be between £200 - £230. The aim is to use this to facilitate children moving out of taxi style arrangements into independent travel with a bus pass. Currently a bus pass costs about £655 per annum compared, with the average annual hired transport cost of £4,584 (based on an average cost of £24 per day). Estimating overall savings are difficult since each child's actual daily cost is different; removing children from shared transport does not initially impact much on the cost of that vehicle since it is still transporting the others. It does however, positively contribute to the life skills a young person will need as they move into adulthood.
- 10.10 It will be a minority of children that we are able to place on bus transport. Abbey Court, many Bradfields and many Rivermead students have SEN of such complexity that it would be unsound practice to ask them to use public transport and we would not be able to defend that decision in a judicial review.
- 10.11 More radical measures are being pursued in order to bring down within year spend and to minimise spend for the coming years. One of these involves mid year change in price structures; the second involves working with Norse who deliver SEN transport in two other Councils.
- 10.12 Removing transport from children who are eligible, and for whom we have a statutory duty to provide transport could result in legal challenge

by way of an application for judicial review at a cost to the local authority or a complaint to the Local Government Ombudsman.

## **11. Implications for looked after children**

- 11.1 Looked after children with special educational needs are assessed for travel support in the same way as their peers. It is important to maintain stability of school placement and this may mean that for a looked after child placed out of Medway, there is an additional transport cost. As these tend to be individual children, the daily charge to the budget may be as high as £130 per day. This has to be taken into account in the overall costings for any placement out of area.

## **12. Financial and legal implications**

- 12.1 The 2013-2014 budget for SEN Hired Transport is £3.4 million, however the quarter 1 monitoring reported a £1.1 million overspend against this. It is anticipated that the measures outlined in section 10 of this report, should to some extent mitigate this pressure, however the impact of demographic growth is likely to increase the number of children eligible for transport. The 2014/15 draft budget elsewhere on this agenda has included the £1.1 million as a pressure in the budget.
- 12.2 Travel arrangements have to take place with the consent of the parent. There is no legal right for the Council to impose personal budgets / cash payments in lieu of hired transport. Each case must be assessed on an individual basis and the support given for travel to school must be consistent with the child's disability and special educational needs. Where a family have used public money to enable them to have a motability vehicle, the Council still requires the consent of the parent for them to make the vehicle available to transport the child to school (if the child meets the eligibility criteria).

## **13 Recommendations**

- 13.1 That Members note and discuss the actions being taken to reduce the pressure on the SEN transport budget in light of the statutory duties, demographic pressures and providers' increased running costs.

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**Background papers:** none