

# Brighton & Hove City Council

## Children, Young People & Skills Committee

## Agenda Item 41

**Subject:** Progress Report: Home to School Transport for Pupils with Special Needs and Other Social Care Transport Contract

**Date of meeting:** 9 January 2023

**Report of:** Executive Director of Families, Children and Learning

**Contact Officer:** Mia Bryden  
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**Ward(s) affected:** All

The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) was due to administrative issues.

### For general release

#### 1. Purpose of the report and policy context

- 1.1 The purpose of this report is to describe the drivers of increased pressures on the home to school transport budget and service delivery.
- 1.2 In May 2019 the Local Government Association (LGA), supported by the County Councils Network (CCN), published a report which identified the total national deficit on home to school transport stood at £111m. No figures have been released post pandemic, but it is understood this figure has grown exponentially.

#### 2. Recommendations

- 2.1 That Committee notes the increased pressures on the home to school budget and service delivery.
- 2.2 That Committee rejects the request for an additional contract price uplift by three home to school transport operators.

#### 3. Context and background information

- 3.1 The current duty is for LAs to provide all eligible children between the ages of 5 and 16 with free transport to their education setting.

- 3.2 This legislation on free school transport only applies to children until the end of Year 11. Any arrangements for travel support for 16-19 are at the discretion of LA's and some operate a contribution towards travel costs for this age group, however BHCC currently provides free travel support to families on a low income and for some young people with a learning or a physical disability.
- 3.3 The LA also has a duty in respect of 'adult learners' (Post 19), covered by section 508F of the Education Act ("EA") 1996. Any transport arrangements provided under this duty must be free of charge.
- 3.4 There are currently eight operators who provide hired transport to 545 under 16-year-olds, and 104 16–18-year-olds. Six operators are taxi firms and three are Public Service Vehicle (PSV) providers (minibus/coach providers). The council currently employs two council drivers and seven vehicle passenger assistants.
- 3.5 The total budget available to provide home to school transport in 2022/23 is £3.883m, this is currently forecast to overspend by £1.213m due to a combination of increasing numbers of pupils eligible for transport and increasing operator contract costs per pupil.
- 3.6 The current total cost per pupil under 16 years of age is circa £7,274 per year (190 days) and £7,650 for 16–18-year-olds per year. Council spend on SEND transport has increased by 53% since 2019/20 and that is because of a 30% increase in the number of pupils transported, and a 17% increase in operators costs per pupil.
- 3.7 The current estimated spend across the eight HTST operators for the 2022/23 financial year is £ 4,207m to transport 605 learners with SEND.
- 3.8 The only source of comparable cost per pupil transported by other LAs, is the Local Authority Passenger Transport Survey, with data available from 2019/20. This shows that in 2019/20 BHCC were transporting proportionately less children than other LAs at a comparable cost per pupil.
- 3.9 There are several drivers for the increased pressures on the budget:
  - a. The growth in the number children with EHCPs, which has doubled since 2016, plus the number of children without ECHPs but who have a SEND diagnosis who are eligible for free transport. This is the case nationally as well as in the city. Without action to address the national policy and funding levers which are contributing to the rise in children with EHCPs, LAs have little opportunity to contain spending on SEND transport.
  - b. Routes are generally awarded to the 'lowest bidder' but the needs of children and young people must also always be an important consideration in route award. Contracts negotiated via the council are significantly more expensive than taxi firms charge parents directly.

- c. Statutory Guidance is broad, and whilst there is a duty to provide transport to eligible children aged 5-16 and post 19 learners, there are wider LA duties to provide transport to a broader cohort of residents and the LA cannot operate with a blanket refusal. The new proposed statutory guidance does little to reduce the duty on LA's and may even create additional requirements.
- d. There is a larger amount of more costly 'Travel Alone' journeys. These are necessitated by:
  - I. Increasing complexity of needs of children with profound and multiple disabilities. No council intervention can reduce this complexity.
  - II. Increasing numbers of children presenting with challenging behaviors on transport which puts either themselves, the driver or other road users at risk. The service works closely with parents, schools and other professionals to provide supportive strategies to reduce the need for single occupancy journeys based on behaviours that challenge, but it is not always appropriate for children to travel in a shared vehicle.
- e. There is clear correlation between available capacity in special schools as well as parental preference for children to be educated in out of city placements, and the spend on home to school transport. These journeys are costly due to mileage, the fact a vehicle passenger assistant is often required and the fact it is difficult to logistically combine journeys for pupils because to do so would make journey times unacceptably long. There are further challenges because children are often placed in special schools on an individual basis, as and when a suitable space becomes available, the net result is sub-optimal to efficient route planning. Mitigations include ensuring children are educated successfully within their local schools in a way that meets their needs and enables them to thrive.
- f. Where children are not going to their education setting Monday-Friday for a full day in one location, or are inconsistent attendees, transport is harder and more expensive to secure. Mitigations include targeted strategies in conjunction with SEND, other council services and education settings to improve attendance and timetabling.
- g. In some instances, more than one school or alternative provision will be named in order to best meet the needs of the child. In such circumstances transport is required for more than one setting which attracts a higher contract price. The educational needs of the child must come first, and transport must be provided to qualifying schools.
- h. It costs an estimated £865k to provide transport to young people between the ages of 16 and their 19th birthday. The costs are significant for this age group due to the fact that each young person's timetable differs

resulting in multiple journeys throughout the week and transport is currently provided door to door. Some LAs, including our neighboring authorities, only provide transport at the beginning and end of the college day, oftentimes with centralized pick up and drop off locations, and they operate a parental contribution towards travel for this age group.

- i. There is a lack of competition in the local market, which does not de-incentivize high contract costs, particularly for mini-bus providers. The service uses a Dynamic Purchasing System to procure operators. Dynamic Purchasing Systems were specifically introduced to open markets up to greater competition, reduce costs, and to encourage smaller suppliers.
- j. Nationally there are driver and vehicle passenger assistant shortages, and operators advise of increased overheads (wages, fuel, vehicle financing, insurance, CCTV rental, road taxes, maintenance and admin costs). This is pushing up contract prices. Workforce shortages disrupt and delay service delivery.

#### **4. Analysis and consideration of alternative options**

- 4.1 Annually, in October, operators are contractually entitled to request an uplift on initial contract prices. The contract provides: *The Council are not guaranteeing any uplift or minimum increase.* £50k was assumed in the forecast (over) spend for this October's operator uplift requests.
- 4.2 Despite there being no contractual obligation the council gave a 2% uplift on eligible routes where operators requested a higher contract price (3 operators). An uplift was not given on any routes which had already received an uplift, nor on routes which were awarded or re-awarded (after route handbacks, as described in September's committee paper) from January 2022. A real living wage payment has also been made to all operators, for all crews, across all home to school transport routes. The uplifts will be effective from April 2023 in line with the operator signed contract, new financial year and the according annual budget.
- 4.3 In April 2022 the service enacted a 3% increase on eligible routes to operators who requested an uplift, and in May 2022 the service made a one-off fuel payment to all operators, the calculation for which was described to the Committee in September.
- 4.4 In determining the latest financial uplift request, fuel prices were reviewed. At the time fuel prices were closely aligned to what they were reported as in March 2022, therefore there was little justification for operators requesting an uplift based on fuel prices where the route was awarded from mid-March 2022 onwards.
- 4.5 The approach taken by other LAs was also considered. It has to be stressed that HTST is operated differently across LAs, with some LAs operating a full

or partial in-house fleet, some with integrated transport units with the NHS and/or adult social care, some fully outsource to providers etc. Each LA also has their own eligibility and discretionary criteria, as well as there being a real difference in demand and profile of SEND need. The geographical footprint also obviously differs vastly from region to region. Therefore, whilst some authorities may appear to give a more substantial annual financial uplift, their contract prices may be lower than BHCCs, see 3.8.

- 4.6 When new children and young people join the service, as they do on a weekly basis, this creates 'contract variations' and the operators take those opportunities to increase their initial contract prices, this tends to range from £30 to £100 a day.
- 4.7 Following the 2% and real living wage uplift offered by the council, a request has been made by three operators for a 20% increase on all routes.
- 4.8 These three operators advise that if they do not receive a 20% uplift on contract prices, they will need to return routes they no longer feel are profitable. Returned routes can cause disruption and delays to the transportation of service users and can trigger some children to school refuse. It is not possible to estimate the number of routes that operators may return and therefore the impact this could have on individual children and young people is unknown.
- 4.9 There would be a further budget pressure, on top of the £1.213m overspend, of up to £0.111m if the requested increase is awarded on all HTST routes for these operators. This would obviously increase significantly if the rest of the operators requested a 20% increase. If this were to set a precedent an across the board 20% uplift in 23/24 would cost in the region of £0.950m.
- 4.10 There will also be budget pressures if routes are returned and re-awarded either to the same or another operator at a higher contract price. Without knowing which and how many routes these three operators would return it is not possible to advise on the specific budget pressures.
- 4.11 There are also risks with one Public Service Vehicle operator (operating three routes, with 14 CYP) who has advised they will need to cease providing a service for the council if do not receive their requested uplift. This would push contracts requiring the transportation of children, young people, and adult learners using larger wheelchairs to a minibus operator who charges between £224 and £392 a day, regardless of the number of passengers, and whose conduct of bidding on and returning routes for inflated contract prices adds an additional unbudgeted cost pressure to the service.
- 4.12 If routes are returned and another operator wins the route, the service will work with parents carers, schools and other professionals to transition children and young people into their new travel arrangements. We know how unsettling this can be. Whilst the service does it best to provide continuity of crews, in some instances, such as this, transport variations are unavoidable, and this is described in the Parent and Carer Agreement under 'Changes to

transport arrangements' which is signed by parent carers upon confirmation of eligibility for the service.

## **5. Community engagement and consultation**

- 5.1 The service works in co-production with the Parent and Carers Council. A representative will provide a verbal update at Committee.

## **6. Conclusion**

- 6.1 There have been year on year cost pressures in this service area as the number of children eligible for free transport increases as does the costs operators charge. This is in line with other councils.
- 6.2 Actions that help to mitigate cost pressures for SEND transport include taking a strong strategic approach to SEND and inclusion; establishing clear leadership of SEND transport planning and joining-up across teams; developing a menu of travel assistance options, skillfully working with parents and schools; and working in partnership with schools and across services.
- 6.3 There is a tension at the heart of home to school transport policy between the responsibilities of parents in getting their children to school versus the expectations of parents in the level and type of assistance that local authorities can provide. Some of the reforms and cost reductions that the service has been trailing e.g Independent Travel Training and Personal Travel Budgets do not always work if the parent carer does not agree to these voluntary initiatives, for example 25 parents have been approached with the offer of free travel training for their child, 23 parents have declined.
- 6.4 Putting in place a good transport offer for young people at risk of poor attendance, attending multiple alternative provision sites, or getting back into college post-16 after a period of being NEET can all help with furthering the educational outcomes and life-chances for disadvantaged young people in keeping with the council's Education Disadvantaged Strategy, but they all require investment in transport over and above statutory requirements and such costs are generally absorbed by the home to school transport budget as additional cost pressures.
- 6.5 The service is primarily funded through council tax. The service should continue to adhere to the contract in place with operators and continue to ensure best value for public money.

## **7. Financial implications**

- 7.1 The total budget available to provide HTST in 2022/23 is £3.883m, this is currently forecast to overspend by £1.213m due to a combination of increasing pupils eligible for transport and increasing costs per pupil. The

detailed financial implications are contained within the main body of the report.

Name of finance officer consulted: David Ellis Date consulted 19/12/22

## **8. Legal implications**

- 8.1 There is no contractual obligation on the Council to increase the fees. There is a risk that increasing the fee where it is not a requirement in the contract could amount to a subsidy or a breach of the Council's fiduciary duty.

Name of lawyer consulted: Alice Rowland Date consulted 13/12/22

## **9. Equalities implications**

- 9.1 The statutory duty on the council to provide free Home to School Transport for children and young people with complex special educational needs and disabilities (SEND) is aimed at ensuring their access to schooling is assured, especially given mobility issues and the fact that the nearest suitable school may be further than for children without SEND. In arranging transport, the council must comply with the Equalities Act of 2010 which requires that children and young people with SEND are not treated 'less favorably' than their peers and that there is no indirect discrimination against their parents and carers by requiring of them more than would reasonably be required of other parents. An Equalities Impact Assessment is available in the options appraisal.

## **10. Sustainability implications**

- 10.1 The Education Act 2006 (as amended) places a general duty on the Council to promote the use of sustainable travel and transport. The duty applies to children and young people of compulsory school age and sixth-form age who travel to receive education or training in the Council's area.

## **Supporting Documentation**

