Aims

As a Member of the School Transport and Curriculum Appeals Committee you will carry out the important role of hearing appeals from parents/carers who have been, either, assessed as not eligible for travel assistance against the Council’s policy or where the parent is appealing against the type of travel assistance awarded.

To carry out this role effectively you will need to understand the rules, statutory guidance, relevant legislation and Medway’s Education Travel Assistance Policy in relation to travel assistance for mainstream children and children with special educational needs and disabilities.

The training will also explain how the appeals process works, the committee’s role and the general principles of good decision-making.
Overview of legal requirements

• Legal requirements to provide home to school transport contained in the Education Act 1996 as amended by the Education and Inspections Act 2006

• Section 508B – Duty placed on authority to make provision in respect of an “eligible child” (defined in Schedule 35B)

• Section 508C – Discretionary power given to make provision for other children

• DfE Statutory guidance – Home to school travel and transport guidance (July 2014)
Eligible children (Schedule 35B)

- A child living beyond statutory walking distance of their nearest qualifying school
  - beyond 2 miles (if below the age of 8); or
  - beyond 3 miles (if aged between 8 and 16)
- A child with special educational needs, a disability or mobility problems
- A child who cannot reasonably be expected to walk to school due to the nature of the route
- A child in receipt of free school meals or where a parent is in receipt of maximum level of working tax credit.
Council Policy

- The setting of policy relating to school transport is the responsibility of the Executive (the Cabinet).
- The role of the Committee is to determine appeals relating to decisions made by the Council in relation to home to school transport provision.
Medway Council’s Education Travel Assistance Policy (mainstream)
What is the basis for Medway’s Education Travel Assistance Policy (mainstream)

- At a minimum needs to meet legislation and Governmental Department statutory guidance

- Policy set by Cabinet

- This policy is applied by officers with some limited discretion
Eligibility

Standard Criteria:
• Attending nearest qualifying school
• Live over 3 miles from school (8 yrs old and over)
• Live over 2 miles from school (under 8 yrs old)

Low-Income Criteria:
• Attending 1 of 3 nearest qualifying schools
• Live between 2 and 6 miles from the school

Preference:
• The named preferences on a school application may affect eligibility
• Recent LGO finding on a Medway case
Eligibility (continued)

**Denominational**
- Families may qualify if:
  - child is from a low income family, or
  - child is a Medway looked after child
  - child attends a school on denominational grounds must be the same denomination and application countersigned by a vicar/priest/incumbent of a church of said faith,
  - and the denominational school is between 2-15 miles

**Selective**
- Qualify if:
  - Child assessed as grammar through the Medway Test assessment procedures (11+)
    - Meets the distance and nearest qualifying school criteria
- Children not assessed as grammar through the Medway Test assessment procedures and who have secured a Medway grammar school place via an Independent Admission Appeal Panel are not eligible
Medway’s Policy

According to Medway Council’s Policy, the following should not be taken into account when assessing eligibility for travel assistance:

- Parent/carer’s work or other commitments
- Attendance by siblings at other schools
- If a parent/carer chooses to send their child to a school that is not the nearest qualifying school to the home address
- Work experience placements
- An address other than the home address, or another regular address (5 days per week)
- A journey between one educational establishment to another
- Ad hoc visits to other establishments including schools and colleges
- Out of hour clubs
- Educational provision planned over weekends or the bank holidays
- Linked courses that take place outside normal school hours
Medway Council’s Education Travel Assistance Policy (SEN)
Special Educational Needs (SEN)

- An Educational Health and Care Plan (EHCP) does not provide an automatic entitlement to transport.
- Children will only be entitled to free home to school transport under this category if they cannot reasonably be expected to walk to school and no suitable arrangements have been made by the local authority to enable them to attend a nearer school.
- For a child with an EHCP, their school will be the school named in Section I of the EHCP.
- The child must be resident in Medway.
- They must be of compulsory school age or a post-16 provision.
- **Medway Council Policy**: The needs of the child are assessed first. Where transport is not required in relation to SEN needs, the distance from home to the school being attended will also be taken into consideration.
The Equality Act 2010

- The Local Authority must take reasonable steps to secure that a child or young person is not placed at a substantial disadvantage compared to a child or a young person without that disability.

- The LA must also make ‘reasonable adjustments’ to policies, criteria or practices in carrying out its public functions when considering a case involving a disabled child or other person.

Section 21(2) and Section 29 Equality Act 2010

- For example, it may be reasonable to change the time or mode of transport so as to enable attendance at after school clubs if other eligible children without the disability are able to attend them without the same transport arrangements being made, such that the disabled child is put at a substantial disadvantage.

D v Bedfordshire CC [2009] EWCA Civ 678
What does disability mean?

- Section 6(1) of the Equality Act 2010 provides that a person has a disability if:
  - P has a physical or mental impairment; and
  - The impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.

- The effect of an impairment is considered long-term if:
  - It has lasted for at least 12 months;
  - It is likely to last for at least 12 months; or
  - It is likely to last for the rest of the life of the person affected. (Schedule 1, paragraph 5)
Young People (16+)

- The law requires young people to be engaged in education or training up to the age of 19. However, Local Authorities do not have a statutory duty to provide home to school/college transport free of charge for learners aged 16 to 19. Subsidised post-16 transport is therefore a discretionary provision.

- Section 509AA of the EA 1996 obliged local authorities to prepare for each academic year a transport policy statement specifying the provision of transport or otherwise that is considered necessary to make for facilitating the attendance of persons of sixth form age.

- “Persons of sixth form age” means those over the compulsory school age but under 19 or those that began a course of education or training before turning 19 and are still attending that course. (section 509AC(1))

- Local Authorities are obliged to secure that effect is given to the arrangements specified in the transport policy statements (section 509AA(7)(b))

- The duties under the Equality Act 2010 still apply.
Local authorities have a duty under the Education and Skills Act 2008 to encourage, enable and assist the participation of young people with special educational needs and disabilities up to the age of 25 in education and training.

Section 509AB(1) of the Education Act 1996 requires local authorities to set out the extent to which the arrangements they have put into place pursuant to the transport statement prepared under section 509AA facilitate the attendance of young people with SEN/D.

A statement or EHCP does not provide automatic entitlement to free travel arrangements.
Medway Council’s Travel Assistance application process
How an application is processed

• Application received by The School Admissions and Transport Department

• **Mainstream:**
  Application assessed under either the standard, low income or denominational criteria

• **SEN:**
  Application assessed on child needs first and above criteria (if needs prove insufficient for travel assistance)

• All school transport distances are measured using Medway Council’s Geographical Information System from the child’s home address to the school to be attended and any subsequent nearer school.
How an application is processed (continued)

• Applicants are always given the opportunity to provide any additional evidence supporting their application.

• Officers always use discretion to take into account individual circumstances where possible. For example; a child’s medical need, moving house, family circumstances etc.

• The order of a pupil’s preferences for secondary school may be taken into account.

• After taking into account all provided and relevant information the officer will determine whether or not the child is eligible under the Council’s Education Travel Assistance Policy.

• If a child is deemed not eligible then the parent is advised of the review/appeal process.
How do we define the nearest qualifying school

- School that meets the child’s age, ability and aptitude and is the closest to the child's home address using the shortest available walking route
- For children assessed as grammar under the Medway Test assessment procedures, grammar schools will be considered
- For children assessed as non-grammar under the Medway Test assessment procedures, non-grammar schools will be considered
- For children with an Educational Health and Care Plan (EHCP) (i.e. a child being considered under the SEND provisions of the policy), the school being attended will be named in the EHCP.
How available walking routes to school are measured

• Walking distances to schools are measured by the shortest available (safe) walking route and may take into account public footpaths and public rights of way.

• The shortest available route is one along which a child, accompanied as necessary, may walk safely. It’s the parent/carer’s responsibility to arrange accompaniment, unless there are good reasons why it is not reasonable to expect the parent to do so.

• Routes are measured using Council’s GIS and therefore may differ from distances given on websites such as Google maps.

• Distances for every child are measured from the address point of the home to the same address point of the school to ensure accuracy across all applications.
The Assessment of Walked Routes to School

- Any assessment of specific roads, footpaths, etc. is undertaken by the Road Safety Team on behalf of School Admissions and Transport.
- Assessment are made in compliance to the provision of the ‘Road Safety GB’ guidelines
- Assessments are made by a Road Safety Officer and Engineer (as a minimum)
- Routes are assessed at school time and take account of all seasonal conditions
- A formal route assessment is produced and a decision made on whether a route is available or unavailable
How are hazardous routes identified?

• If a part of a route is raised as potentially hazardous, officers can arrange for a route assessment and report to be undertaken.

• The report forms the basis of a decision as to whether or not the route in question is deemed available or unavailable.

It is not for the Committee or other parties to the appeal to assess safety of routes.

• If a route is deemed unavailable, the area will be removed from the GIS system for use when measuring home to school distances.
What is considered?

• ‘When assessing the safety of an “available route”, only the potential risk created by traffic, the highway and topographical conditions should be considered’
  - Road Safety GB Guidelines

• Personal safety issues of children travelling alone are not considered. Local authorities are not legally obliged to provide transport because a route is perceived to be unsafe on the grounds of personal safety and security.

• An ‘available route’ is one that a child, accompanied as necessary, can walk with reasonable safety to school.

• Case law has found that road safety assessments must look at the relationship between pedestrians and traffic only.
Accompaniment

Paragraph 17 of the Statutory Guidance provides that in determining whether a child cannot reasonably be expected to walk for the purposes of SEN, a disability or mobility problems, or due to an unsafe route, the local authority will need to consider:

- Whether the child could reasonably be expected to walk if accompanied. If so, whether the child’s parent can be reasonably expected to accompany. There are a range of factors which can be considered: e.g. age, and whether the parent is disabled.
Parental responsibilities

- Parents are responsible for ensuring that their children attend school regularly and can be prosecuted if their child fails to do so (s7 and s444 Education Act 1996)

- A parent will have a defence against a prosecution where the local authority has failed to make suitable travel arrangements, pursuant to its duty under s508B (but not as a result of failure to exercise discretion to provide transport under s508C)
Officer A declines transport

Parent challenges decision (within 20 working days)

Stage 1: Review by senior officer (20 working days)

Parent challenges outcome of stage 1 (20 working days)

Stage 2: Appeal heard by Committee (40 working days)

Decision letter (5 working days)

Complain to LGO if appellant believes maladministration
Order of Proceedings

- Order of proceedings must be strictly followed to ensure a fair hearing
- The Committee should be welcoming and put the parties at ease during the appeal

The case for the LA will be presented

LA rep may be questioned by the appellant and committee

Appellant or his/her representative present their case

Appellant may be questioned by the LA rep and committee

LA representative may sum up

Appellant may sum up

Committee make decision with neither party present
What is “Evidence”?

• Decisions MUST be made on the basis of evidence produced by the appellant and the LA
• As the decision makers, members of the Committee are not entitled to produce own evidence (eg in relation to the safety of a route)
• Committee may ask questions of both parties where they are relevant to the case.
• Committee may request that the appellant or the LA produce evidence (possibly after an adjournment)
• Where a Member is seeking to rely on local knowledge it is important that they are transparent on this point and give parties the opportunity to comment on the local knowledge advanced.
• Each party should be given opportunity to hear and answer evidence and must be given a fair opportunity to respond.
• Members should remain balanced, not be too friendly to colleagues who may attend as ward members and should not give an impression or support or otherwise to either party.
Decision-making on appeals – key principles

• Appeals can only be upheld in two circumstances
  – Where the Committee is satisfied the Council policy has not been applied properly in a particular case

  OR

  – Where policy has been correctly applied but the Committee is satisfied there are exceptional circumstances justifying a departure from normal policy

• Members should be mindful of avoiding unreasonable public expenditure, although this should not be a determining factor.
• Members must consider each case on its merits
• The Committee must allow sufficient time for full and detailed decision making
Decision-making on appeals – key principles continued…

• Members are asked to bear in mind that Medway Council must be mindful of the general duty to Section 9 of The Education Act 1996 (see below)

• “In exercising or performing all their respective powers and duties under the Education Acts, the Secretary of [State and [local authorities]] shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure”
Has the Policy been properly applied?

- Nature of decision reached
- How review was conducted – including the standard followed e.g. Rd Safety GB
- Info about other departments and/or agencies that were consulted as part of the process (if relevant)
- What factors were considered
- Rationale for decision reached
- Were details provided to parents of how to escalate their appeal to Members if they wish to challenge decision about:
  - Transport arrangements offered
  - Child’s eligibility
  - Distance measurement in relation to statutory walking distances
  - Safety of the route
Questions you should ask of the Presenting Officer

The Presenting Officer must be able to answer questions on:

• Need
• safety of route
• distance to access public transport
• any health and safety issues for child
• whether it is reasonable to expect child to be accompanied
• any disabilities of parent
• is child at critical stage in education if transport arrangements are being changed or withdrawn – potential impact/disruption.
Questions you should ask of the appellant

Depending on grounds for the appeal given:

- **Finances**
  - Any siblings that parents are paying transport for?
  - Are the parents employed? If so, is this on full-time or part basis (or 0 hour contract). Any Redundancy/end of contract?
  - Are they receiving any benefits?
  - Receiving financial support from family/friends?
  - Documentation to demonstrate hardship

- **Health**
  - Any medical issue affecting child/parent and causing child difficulty to walk to school or parent to accompany?
  - Evidence needed to clearly explain why pupil concerned will require transport assistance in order to get to school

- **Social, behavioural, educational reasons**
  - Any particular vulnerabilities about the child which would make them unable to cope with walking or public transport?

- **Other possible issues**
  - Some examples; domestic violence; LAC, house move, bullying issues, recent bereavement, divorce or the breakdown of a relationship, court orders impacting on the child’s safety at a particular school.
Decision Making Process

1. Has the Policy been correctly applied?
   - No: Appeal upheld
   - Yes: Are there any exceptional circumstances that justify a departure from policy?

2. Are there any exceptional circumstances that justify a departure from policy?
   - Yes: Appeal Upheld
   - No: Appeal not upheld
If appeal upheld - options for transport assistance

• Bus pass (majority of cases)
• Rail pass
• Fuel allowance (mileage) – parental consent required
• Personal Travel Budget (SEN only-for children with specific /exceptional travel needs)
• NB: A parent can appeal against the type of travel assistance awarded
• Important to know costings and needs to have been explored with parents in hearing
Decision-making – predetermination and bias

• A Councillor who has, or appears to have, “made up his mind” on a matter before the formal consideration of it at the appeal will have fettered his discretion and therefore should not take part in the determination of the appeal.

• The Councillor must not be, nor appear to be, biased in his or her consideration of the appeal.

• Test for bias: Whether a fair minded observer who is suitably informed and who, having considered the facts, would conclude that there was a real possibility of bias.

• If a Councillor knows the appellant then they should decide whether the relationship amounts to an OSI and if it does should not sit on the Committee during consideration of that appeal.
Decision-making – Code of Conduct

• A Councillor who is or appears to be biased may also be in breach of the Code of Conduct

• “…must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person…”

• Where a Councillor is a Trustee or a Governor of a particular school that is relevant to the appeal, this should be disclosed and may give rise to an Other Significant Interest. This should be discussed with the clerk / legal advisor in advance of the hearing
Decision-making on appeals – summary of key principles

• Adhere to the procedure for the hearing

• Establish all relevant and material facts and not look to find reasons to uphold the appellants case

• Check that officers have acted lawfully and have correctly applied Council policy

• Avoid taking decisions which are inconsistent with Council policy unless there are exceptional circumstances

• Learn from Local Government Ombudsman commentary on previous unsound decisions (eg distance/route safety)
Local Government and Social Care Ombudsman (LGO)

- The LGO was created by the Local Government Act 1974 to **investigate allegations of maladministration** concerning public authorities providing services at a local level.

- Its role is to investigate complaints, but it also serves an important role in providing advice and guidance on good administrative practice.
LGO: school Transport

- The LGO will not question the Council’s decision unless it believes that the decision made was unfair, or because of a mistake, or because the request was not handled correctly.

- Usual grounds for complaint:
  - The council’s policy for providing help with transport is not objective, clear and fair.
  - The council failed to apply their policy properly or fairly.
  - The council/committee did not take relevant information into account in reaching its decision, or took irrelevant information into account, or
  - The council delayed dealing with the application for help

- In considering a complaint, the LGO may ask you as Committee Members to demonstrate:
  - That the appeal hearing was conducted fairly
  - How you tested the case of both parties
  - What evidence you took into account in reaching the decision and whether you fully explored issues and concerns raised
Lessons learned from Ombudsman complaints

- Parents must be asked to include detail of route safety issues in their appeal paperwork
- Clear officer advice will be provided in case papers
- Adjourn if new route safety issues raised during hearing - Accelerated timescales for route safety assessments via SLA therefore no need to uphold for fixed period
- Members not to overturn technical advice on route safety
- Decisions must take into account all issues raised by both parties and details of routes where safety issues raised must be detailed in decision letter.
Case Studies
Scenario 1: Mainstream

Policy Decision:
+ Sophie is attending Victory Academy, which is the fourth nearest school to her home address. She is in Year 8 and has been at the school since the beginning of Year 7
+ Sophie receives free school meals and meets the low-income thresholds
+ Officers have refused transport on the standard and low-income criteria because Victory is not one of the three nearest qualifying schools to the home address

Appeal:
+ The parent advises that they cannot afford the travel costs to Victory Academy and that they don’t want her to change school because Sophie is settled and has friends at school

Decision:
+ Has the Policy been applied correctly?
+ Are the circumstances exceptional?
+ Would you award travel assistance?
Scenario 2: Mainstream

Policy Decision:
+ Paul lives in Allhallows and attends Sir Joseph Williamson’s Mathematical School
+ Paul was assessed as non-grammar under the Medway Test and gained his place on appeal to the independent admission appeals panel
+ The nearest non-grammar school is The Hundred of Hoo Academy
+ Officers have refused transport on the basis that Paul is not attending his nearest qualifying school.

Appeal:
+ The parent advises that they believe Paul is grammar because an admission appeal panel gave him a place.
+ They purposely did not name The Hundred of Hoo Academy because it doesn’t do the subjects at GCSE that Paul is interested in.

Decision:
+ Has the Policy been applied correctly?
+ Are the circumstances exceptional?
+ Would you award travel assistance?
**Scenario 3: Mainstream**

**Policy Decision:**
+ Pritti lives in High Halstow, is assessed as grammar and attends Fort Pitt Grammar School
+ Officers have calculated distances using Google Maps and this shows that The Rochester Grammar School is closer than Fort Pitt Grammar School.
+ Officers have refused transport on the basis that Pritti is not attending her nearest qualifying school.

**Appeal:**
+ The parent advises that Fort Pitt Grammar School is closer to the home than The Rochester Grammar School. They also provide evidence that they requested nearest qualifying school information from the Council before they applied for schools and this shows Fort Pitt as the nearest qualifying school.
+ They purposely named Fort Pitt Grammar School because they were advised that it was the nearest qualifying school for transport.

**Decision:**
+ Has the Policy been applied correctly?
+ Are the circumstances exceptional?
+ Would you award travel assistance?
Scenario 4: SEN

Policy Decision:

+ John is 9 years old and attends the Evergreen Centre at Warren Wood Primary School due to his hearing impairment.
+ The centre is 1.8 miles from the home address.
+ The EHCP does not specify that John has any issues with mobility or his ability to walk distances.
+ Officers have refused transport on the basis that John’s needs alone are not sufficient for travel assistance and the centre is less than 2 miles from the home address.

Appeal:

+ The mother advises that she can’t take John to school, due to having another SEN child who receives a taxi and she needs to be there for pick up.
+ In response to a panel question, the parent advises that her husband doesn’t work and is at home, but can’t do school runs because it is her role as the mother.
+ The parent believes that it is the Council duty to provide transport.

Decision:

+ Has the Policy been applied correctly?
+ Are the circumstances exceptional?
+ Would you award travel assistance?
Scenario 5: SEN
Policy Decision:
+ Lisa attends Abbey Court School, as the only school that can meet her needs.
+ The EHCP confirms that the needs are sufficient for travel assistance.
+ Officers have awarded travel assistance in a shared mini-bus.

Appeal:
+ The parent is appealing for a solo taxi
+ The parent’s case is that she is not happy with Lisa travelling with other children and that Lisa would become stressed by doing so. The parent provides no evidence to validate this point but says that she ‘knows her daughter’.
+ The presenting officer confirms that there is nothing in the EHCP to support the parent’s request.
+ The costs of a solo taxi would be £75/day (£14,625/year)

Decision:
+ Has the Policy been applied correctly?
+ Are the circumstances exceptional?
+ Would you award travel assistance?
Questions?