

Meeting of the Full Council
Meeting to be held on Thursday, 14 October 2021

Report submitted by the Head of Legal and Democratic Services

Part A

Electoral Division affected:
(All Divisions);

Proposal to Change the School Transport Appeals Process
(Appendix 'A' refers)

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Executive Summary

Following a decision issued by the Local Government and Social Care Ombudsman, the County Council needs to change the way it considers appeals against decisions on school transport. This report proposes the disestablishment of the Student Support appeals Committee and its replacement with alternative arrangements that will meet the statutory guidance and the findings of the Ombudsman.

Recommendation

Full Council is asked to:

- (i) Note the findings of the Local Government and Social Care Ombudsman as set out at Appendix 'A'.
- (ii) Approve the disestablishment of The Student Support Appeals Committee.
- (iii) Approve the establishment of an Independent Transport Appeals Panel in accordance with the arrangements set out in the report.
- (iv) Request that Political groups nominate Councillors to sit on the new Transport Appeals Panel on the following basis:
 - Conservatives - Up to 7 members
 - Labour - Up to 5 Members
 - Liberal Democrat/Green - Up to 1 member each
- (v) Authorise the Director of Corporate Services to make any minor consequential amendments to the constitution as a result of the above.

Background and Advice

On 25 August 2021 the Local Government and Social Care Ombudsman (the Ombudsman) which has powers of the high court, published a final decision against Lancashire County Council. The Ombudsman found fault in the current process adopted by the Student Support Appeals Committee. This is because the Student Support Appeals Committee only considers appeals by written representation from parents and officers. The full judgment of the Ombudsman is attached at Appendix 'A'.

In 2014, the Department for Education published a Home to School Travel and Transport Statutory Guidance for local authorities. This government guidance was updated in 2016 and states that a review by an independent appeal panel should consider written **and verbal (oral)** representations from both the parent and officers involved in the case.

The Ombudsman comments that there are good reasons for doing this including: transparency; natural justice and opportunity for all parties to ask questions. The Ombudsman states that as the guidance is statutory, councils have a duty to have regard to it when formulating their policy. The county council therefore needs to make appropriate arrangements to meet these requirements, in particular, the need to allow oral representations from both officers and parents and carers.

Student Support Appeals Committee

The Student Support Appeals Committee was established in 2010 to introduce councillor involvement and oversight into what had previously been an officer-led system. The four-member committee has been effective in managing appeals and introducing an independent review process for approximately 200 school transport appeals a year.

However, the requirement to allow oral representations will significantly expand the time required to consider appeals, from approximately one afternoon per month to around three days per month. It is therefore unrealistic to continue with this committee given the level of demand this would place on a small number of councillors.

New Proposal - Independent Transport Appeal Panel

It is proposed that new arrangements be introduced which mirror the current arrangements for school admission appeals. The new Independent Transport Appeal Panels would be made up of three representatives, being a mix of county councillors and independent members. These would be drawn from a pool to ensure that the burden on any individual in terms of time commitments would not be too great.

In terms of the membership of Transport Appeals Panels, the statutory guidance states:

"The independent appeal panel members should be independent of the original decision making process (but are not required to be independent of the local authority) and suitably experienced (at the discretion of the local authority), to ensure a balance is achieved between meeting the needs of the parents and the local authority."

The county council already has a large pool of about 60 independent members who sit on school appeals panels. They will be invited to agree to also join transport appeals panels. In addition, and to ensure ongoing engagement from elected councillors, the political groups will be asked to nominate representatives to the pool as follows:

- Conservatives - Up to 7 members
- Labour - Up to 5 Members
- Liberal Democrat/Green - Up to 1 member each

Note that individual panels will not be required to be politically balanced and may be made up of any combination of elected councillors and independent members. Benchmarking exercises conducted with other large councils with similar numbers of transport appeals to those in Lancashire, indicate that a pool of 20 transport appeal panel members are needed as a minimum. There is therefore confidence that Lancashire can identify sufficient potential panel members from amongst councillors and independent members.

Implications and considerations

Training will be provided for any county councillors nominated and independent members, with additional training for those interested in Chairing the panels.

Councillors acting as Chair of a Panel would not be able to hear appeals from parents and carers in their own division.

The new panels would not be formal committees of the council but would count as an official duty for the purposes of claiming travel expenses.

Panels will decide whether to meet face to face or virtually, dependent on the technology available and the individual considerations and preferences of panel members. These arrangements currently apply for school admission appeals.

Generally speaking, the same panel would sit for a full day and consider all the appeals scheduled for the day in a particular area.

Timescales

Changing the way that the county council undertakes transport appeals will also necessitate changes to the Home to Mainstream School Transport Policy. If this is done mid-year, it would impact upon the current school admissions procedure. Therefore, the Ombudsman has given the county council 12 months to change this policy, although it has also asked that a pilot scheme be introduced within 3 months to integrate oral representations into transport appeals. To meet this requirement, it is proposed that a pilot Independent Transport Appeals Panel will be introduced from November 2021. Work will also commence on updating the Home to Mainstream School Policy for 2022/23, so that a new policy will be in place by the next academic year.

The Student Support Appeals Committee will remain in place during the pilot period, although it is intended that the number of appeals taken through the committee will be minimised. Appellants will be given a choice of whether they prefer a written appeal or whether they wish to appeal orally as well.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Resources

The new approach will impact on the resources allocated to considering school transport appeals. There will be an increase in the amount of allowances for independent panel members, dependant on the numbers of councillors involved, although this will be contained within the existing school appeals budget.

The new approach will also require additional officer resources, and it is therefore proposed that a Grade 7 Transport Appeals Clerk post is established to create capacity and to provide specialist support and advice to panels and to manage the administration. The mean cost of a Grade 7 post would be £34,857 including on costs at 2021/22 prices.

It is proposed that the additional costs associated with the proposal for a Grade 7 Clerk are met from the Medium-Term Financial Strategy.

Risk management

The county council is required to implement the findings of the Ombudsman within the timescales set or face further sanctions. The proposed changes also ensure that the county council is operating in line with statutory guidance.

Cohesion and Human Rights

These considerations improve the rights of appellants to be heard and to make representations. Appellants are asked if special considerations need to be made and extra support will be commissioned as required (e.g. Language Line).

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A