

Appeals Sub-Committee Agenda

Date: Tuesday, 19th November, 2013
Time: 2.00 pm
Venue: Committee Suite 1 & 2, Westfields, Middlewich Road,
Sandbach CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Appointment of Chairman**

To appoint a Chairman for the meeting.

2. **Apologies for Absence**

To receive any apologies for absence.

3. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

4. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the meeting. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

For any apologies or requests for further information, or to give notice of a question to be asked by a member of the public

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5. **Exclusion of the Press and Public**

The reports relating to the remaining items on the agenda have been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government Act 1972 on the grounds that the matters may be determined with the press and public excluded.

The Committee may decide that the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1 and 2 of Part 1 of Schedule 12A to the Local Government Act 1972 and public interest would not be served in publishing the information.

PART 2 - MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS PRESENT

6. **School Transport Appeals** (Pages 1 - 198)

The Sub-Committee is asked to determine the following appeals against the decision of the Council not to offer assisted school transport.

Enclosed are:

- A copy of the Home to School Transport Policy
- The Road Safety GB guidelines (for Case 1)

The cases will be heard at the following times:

Case 1: 2.00 pm (pages 81 - 128)

Case 2: 2.45 pm (pages 129 - 166)

Case 3: 3.30 pm (pages 167 - 198)



Home to School Transport Policy

May 2013

Author(s):	Fintan Bradley
Date agreed:	28 May 2013
Agreed by:	Cheshire East Cabinet
Date to be reviewed:	April 2014

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A. Introduction

This policy sets out how Cheshire East Council (the Council) will assist children of statutory school age with travel between home and school. It generally relates to transport between home and school to facilitate a child's education and outlines the responsibilities that parents and the Council have in this process.

The policy also explains the way in which the Council may help with the transport needs of those children who qualify for assistance as a result of specific special educational needs, disability or other mobility difficulties.

This policy applies only to children who are ordinarily resident within the Borough of Cheshire East.

1. Equality statement

The Council will only commit to policies and practices which will eradicate discrimination and promote equality for all, regardless of age, gender, disability, religion and belief, race and ethnicity and sexual orientation.

2. Safeguarding statement

The Council and its partners recognise that safeguarding is everybody's responsibility. Whether their interest is in all young people 'staying safe' in all aspects of our services, or whether they are working in specific areas of vulnerability, all staff will receive appropriate training and induction so that they understand their roles and responsibilities and are confident in carrying them out.

Schools, settings, children, young people and their parents or carers, or any member of the community should feel secure that they can raise any issues or concerns about the safety or welfare of children and know that they will be listened to and taken seriously. This will be achieved by maintaining an ethos of commitment to safeguarding and promoting the welfare of children and young people. This is supported by a clear child protection policy, appropriate induction and training, briefings on and discussion of relevant factors and refreshed learning in line with current legislation and guidelines.

The Council acts as a Corporate Parent for Children in Care. This means that the Council has a legal and moral duty to provide the kind of support that any good parents / carers would provide their own children. This policy has been written to comply with these principles.

3. The legal framework

Sections 508 to 509 of the Education Act and Schedule 35B inserted by Part 6 of the Education and Inspections Act 2006, set out the statutory obligations and powers of local authorities to support children with travel to and from school. These provisions are mandatory for children of compulsory school age and discretionary for children under or over this age.

Statutory distance is defined as:

- 2 miles for a child under 8 years of age; and
- 3 miles for a child who has attained the age of 8 years

These distances are defined in Section 444 of the Education Act 1996 and they have long been established in detailed government guidance. The shortest available walking route is used to measure the distance between home and school, although this does not mean that the child is expected to walk alone, as they should be accompanied by a responsible person as appropriate for their age.

4. Status of policy

By accepting any offer of assistance made by the Council under this Policy, it will be assumed that a parent / carer will be accepting of all the provisions of this Policy.

B. Eligibility criteria

A child of statutory school age (5-16 years) who meets one of the criteria listed within this section will be provided with travel assistance if the child attends a 'qualifying school'.

For most children, including those who have a Statement of SEN in the mainstream sector, the 'qualifying school' is the school that is declared by the Council to be the school or academy serving the area in which the child's home address falls. However, it may also mean the nearest school to the home address where that school is nearer than the designated catchment area school.

1. Distance criteria

Travel assistance will be provided when a child lives beyond **the statutory** distance from his or her qualifying school as set out below:

- a) A child under 11 years of age who attends a qualifying school and lives more than 2 miles from the school, unless parents / carers voluntarily make suitable arrangements.
- b) A child aged between 11 and 16 years who attends a qualifying school and lives more than 3 miles from the school, unless parents / carers voluntarily make suitable arrangements.

2. Low income families criteria

Children from low income groups or families are defined in legislation as those entitled to free school meals or whose families receive the maximum level of Working Tax Credit. Confirmation of low income status is requested (annually) prior to awarding travel assistance, which will be provided when a child meets one of the following criteria:

- a) A child aged between 11 and 16 years who is from a low income family and attends one of his or her three nearest qualifying schools and lives more than 2 miles but less than 6 miles from the school.
- b) A child aged between 11 and 16 years who is from a low income family and attends his or her nearest qualifying school preferred by his or her parents / carers on grounds of religion or belief and who lives more than 2 miles but less than 15 miles from the school.

3. Walking routes to schools

When determining whether the child's home is within the statutory distance, there must be a walking route to the qualifying school that is 'available'. If the nature of the route is such that the child cannot reasonably be expected to walk to school, even when accompanied by a responsible person, then the Council will deem it

‘unavailable’. In determining what is ‘reasonable’, the Council will take into account the latest national guidance issued by Road Safety GB - please refer to section E2 for further details and also Appendix 1 for details of the assessment process.

4. Children with SEN and / or a disability

There is no automatic entitlement to travel assistance for a child or young person who is the subject of a statement of special educational needs or other formal assessment outcome or agreement. Assistance to a qualifying school or college will be given where the distance criteria has been met or when a child / young person has been identified as having a specific need as set out below:

- a) Long term¹ severely restricted independent mobility arising from factors such as:
 - *a physical disability e.g. severe cerebral palsy which may necessitate the daily use of significant mobility aids such as a wheelchair;*
 - *a medical condition resulting in severe persistent pain and / or extreme fatigue, an example of this might be juvenile arthritis;*
 - *a medical condition resulting in serious persistent health and safety risks. Examples of this might be intractable epileptic seizure disorders. Or,*
- b) Significant lack of awareness of common dangers and lack of age appropriate independence skills, so the child could be at significant risk when travelling to school. This could be caused by factors such as:
 - *severely restricted communication skills. Examples might be profound hearing impairment or severe autism or severe language disorder;*
 - *a sensory impairment resulting in significantly restricted mobility, e.g. a severe visual impairment;*
 - *significant learning disability, e.g. a child with severe learning difficulties who is unable to assess risk and adapt to everyday situations;*
 - *severe difficulties with interpreting complex social situations or being able to cope with unexpected change, e.g. a pupil with Asperger’s Syndrome who has very little awareness of personal danger;*
 - *severe behavioural emotional and/or social difficulties in comparison with other children of their age.*

¹ Long term describes something that is likely to last for at least a year or for the rest of the life of the person affected. This can include intermittent or sporadic conditions such as epilepsy or multiple sclerosis

5. Children at boarding or residential schools

Where the Council arranges for a child to board at a school, they will be entitled to travel assistance provided the usual distance criteria is met. Transport will be provided in accordance with the boarding arrangements.

Where a parent has, without the agreement of the Council, decided to educate their child at a boarding school, no assistance with transport will be available from the Council.

6. Children with temporary medical conditions

Where a child is temporarily unable to travel to school independently, as a result of an accident, planned surgery or an illness, then travel assistance may be available to the usual school attended. Requests for transport to an alternative school will generally not be approved. Requests should be made to the Medical Needs Team Manager on 0300 123 5012. Supporting medical advice / evidence must accompany the request detailing:

- a) full medical details of the condition, including timescales for recovery;
- b) written medical confirmation regarding the child's fitness to return to school;
- c) the likely period for which revised travel arrangements may be needed;
- d) the type of vehicle needed, where appropriate, for example, where the child is in a full body cast;
- e) any manual handling risks.

All decisions will be based on the facts provided, taking into account the needs of the child, the availability of appropriate transport and any significant increase in cost. A review date, based on medical evidence, will be set when travel assistance is agreed. Where this is not possible, all arrangements will be reviewed in relation to the specific circumstances.

7. Children permanently excluded from school

A child permanently excluded from a school will be provided with assistance to an alternative mainstream school, provided it is both the nearest suitable / qualifying school and is outside the statutory walking distance from home.

When considering the admission of children under the Council's Fair Access Protocol, which operates outside normal admission procedures, the nearest schools to the child's home address will be identified to determine which school should be offered. The Council will look at available provision and identify with the child, their parents / carers and other relevant agencies which school should be approached. The travelling distance to each school will also be taken into account. Children who are placed under

the Fair Access Protocol will be considered for transport as if the named school was their nearest suitable (qualifying) school.

If the Council places a permanently excluded child in a Pupil Referral Unit or similar alternative provision, this will be regarded as a qualifying school for the duration of the placement.

The transport needs of children who attend an alternative provision because of a fixed term exclusion from a school or academy will be a matter for the school and parents to arrange.

8. Children placed in alternative provision

Where the Council arranges for a child to receive education other than in a school, the location where education is to be provided will be considered as if it were a qualifying school when determining eligibility for free transport. In determining reasonableness, the Council will take into account the cost of the proposed travel assistance and the availability of alternative arrangements.

Where a parent or carer has decided to educate the child other than at school, no assistance for transport will be available from the Council.

9. Children with a disability

Where a child has a disability, under the Equality Act 2010 Disability Discrimination Act 1995 and 2005, reasonable adjustments will be made, as appropriate, in the application of this policy.

10. Parents / carers with a disability

Travel assistance to a qualifying school may be provided for a young person reflecting the practical impact of the disability of either or both of his or her parents. Each such instance will be considered on its own merits at the discretion of the Council. Documentary evidence will be required to support any request for assistance on these grounds, e.g. latest notification of highest level DLA for mobility or a medical consultant letter outlining the nature of the parent's / carer's disability and the impact this has on them carrying out their day to day responsibilities to ensure that their child attends / travels to and from school.

11. Children in the Council's care (looked after children)

The school at which the child is placed by the Council will be deemed the qualifying school for transport purposes. This is irrespective of the Council's normal zoning arrangements in order to provide continuity of educational provision for such children. The allocation of school will be reviewed as part of the child's regular Care Plan review.

12. Children in temporary residential circumstances

The following relates to the determination of entitlement to free transport on a short-term basis where families are forced to relocate temporarily to alternative accommodation owing to circumstances outside of their control:

- a) The Council is prepared to consider applications in respect of children accommodated under a temporary / emergency arrangement, otherwise than where responsibility is accepted by Children's Social Care in (b) below, having regard to the usual distance criteria (though this requirement may be waived in the case of a child accommodated in a refuge, whose safety would otherwise be at risk). Any such temporary transport arrangements made will be subject to review as necessary and at least on a termly basis.
- b) Where school transport becomes necessary on social grounds as a result of the intervention of Children's Services, the cost of providing transport as requested should, where appropriate, be considered the responsibility of and re-charged to the requesting service.

Travel assistance may be awarded, on a discretionary basis, to provide support and stability to a child of statutory school age who is in general education and subject to a temporary change of address due to domestic violence, child protection or homelessness.

When the child / family is permanently re-housed the child will be subject to the usual eligibility criteria, but safeguarding issues will always be considered when determining this and when deciding what type of assistance should be offered.

At no time can the parent / carer delegate their responsibility for the safety of their child's journey to and from school.

13. Emergencies and requests at short notice

The Council will attempt to make arrangements at short notice when requested. However, this cannot be guaranteed, and parents / carers of children who rely upon assistance may need to make their own arrangements at their own expense in the case of an emergency. The Council will not accept responsibility for any arrangements so made by a parent.

No transport provision will be made, other than at the beginning and end of the normal school day, regardless of circumstances, that is in cases of exclusion, illness etc, if a child has to go home during the course of the school day, or during examination periods, the school, parent or carer is responsible for transport.

14. Cases agreed by the Transport Appeals Sub Committee

Notwithstanding the contents of this policy, there may be exceptional circumstances that merit consideration on an individual basis. Assistance with travel will be provided for applications that have been considered and agreed by the Council's Transport Appeals Sub Committee, in recognition of the family's individual circumstances. A copy of the Council's appeals procedure can be found on Appendix 2.

C. Reasons why travel assistance will not be considered

1. Children below statutory school age

Where a child is admitted as a rising five under admission arrangements agreed by the Council, a request for travel assistance will be considered as if he or she were of statutory school age. A child reaches statutory school age at the beginning of the term immediately following his or her fifth birthday. No travel assistance will be provided at lunchtimes or at any time other than the normal start and end of the school day. Travel assistance between these times will remain a parental responsibility.

The Council does not provide travel assistance to a nursery or pre-school setting for mainstream pupils. However, arrangements may be made for a child below statutory school age with SEN to attend a special school nursery or a similar setting offering special needs provision. When making such arrangements the normal eligibility criteria for children of primary school age, including walking distance, will apply.

Transport arrangements to attend a special school nursery or similar setting are provided on a discretionary basis. Parents / carers are advised not to rely upon the provision of travel assistance to enable attendance.

2. Children attending a non-qualifying school (parental preference)

A child will be ineligible for transport if he or she attends a school (mainstream or special) which is not their qualifying school, where this is as a result of parental preference.

When expressing a preference for a school, other than the qualifying school, parents / carers are strongly advised to consider their commitment to providing transport for the whole duration of their child's attendance at that school and to consider whether their ability to provide or pay for that transport is likely to continue over that period of time.

Where a child is withdrawn by a parent / carer from one school and placed in another school, travel assistance will not be provided unless the child is eligible from the home address to the new school. Such a transfer of school will be regarded as an expression

of parental preference. Parents / carers are strongly advised to seek to resolve difficulties locally wherever possible without withdrawing the child from school.

Where a parent's / carer's preferred school is further away from the child's home than another school that can meet their child's special educational needs, the Council may name the preferred school on the statement with explicit reference in Part IV of the statement that the parents / carers will endorse and agree to meet the costs of all transport needs for their child to attend the preferred school.

3. Children attending a school on the grounds of religion or belief

The Council has a duty to have regard to any wish of a parent / carer for their child to be educated at a particular school on the grounds of religion or belief. However, there is no general statutory duty that requires local authorities to provide free transport to faith schools, except in the following circumstance:

Where a child, aged between 11 and 16 years, is from a low income family and attends his or her nearest qualifying school preferred by his or her parents / carers on grounds of religion or belief and who lives more than 2 miles but less than 15 miles from the school.

Except in the circumstance outlined above, the Council will not generally accept applications where a denominational school is not the nearest available educational establishment and the distance criteria set out in section B1 is not met.

4. Post 16 students

Travel assistance will not be provided to students over the age of 16 who are attending either a school sixth form or college of further education (full or part-time). Exceptions are made for students who would previously have qualified for transport i.e. pre 16, as a result of their special educational needs.

The Council is required to consider annually whether and to what extent it supports the travel needs of post 16 students. This assessment is published annually by the end of May on the Council's website at www.cheshireeast.gov.uk/schooltransport

Raising of the participation age

The Government is increasing the age to which all young people in England must continue in education or training, requiring them to continue until the end of the academic year in which they turn 17 from 2013 and until their 18th birthday from 2015.

Raising the participation age (RPA) does not mean that young people must stay in school; they will be able to choose one of the following options post-16:

- full-time education, such as school, college or home education;
- an apprenticeship;
- part-time education or training if they are employed, self-employed or volunteering full-time (which is defined as 20 hours or more a week).

There is no statutory duty for local authorities to provide travel assistance to post 16 students, irrespective of the raising of participation age.

The 16-19 bursary fund

The 16-19 bursary fund helps 16 to 19 year olds continue in education, where they might otherwise struggle for financial reasons. Providers of education, training or employment can distribute the discretionary funds to support any student who faces genuine financial barriers to participation such as costs of transport, food or equipment. Providers have the freedom to decide the scale and frequency of bursary payments.

The 16-19 bursary fund is administered by providers. Young people should apply directly to their academy, school, college or other training provider for support from the scheme.

5. Change of address

When there is a change of address, a pupil's transport entitlement will be reviewed under the policy in existence at that time.

Travel assistance will not be given to maintain a child's place at a school if the family moves house within Cheshire East to a more distant address from the child's school, and where a nearer suitable school exists. However, if no place is available at the nearest qualifying school within the statutory walking distance from the new address then assistance would normally be given to the next nearest qualifying school.

Families moving house are reminded that if they move to an address in another authority, their child will then become subject to the policies of the authority into which they have moved.

Parents /carers of a child with special educational needs, currently receiving transport who move house within Cheshire East should provide at least one month's notice to the SEND Assessment and Monitoring Team to allow their eligibility to be reassessed. The team may offer to move the child to a nearer suitable school bearing in mind any special circumstances, for example, examinations or children in their final year. Should this offer be refused the current school may be deemed as a 'parental choice' and may not meet the criteria of this policy.

6. Sibling, brother, sister

Assistance given for one child in a family will not create a precedent for any of his or her brothers or sisters or other children living at that address. Each child's case will be treated individually and separate applications for assistance must be made for each child. If the transport policy has changed since another sibling received assistance, the younger sibling will be subject to the new transport policy.

7. Part time attendance, detention, after school clubs, etc.

Travel assistance will not be provided at a time other than standard school times e.g. home during the day or late after school, including payback, detention, sporting or other after school activities, clubs or societies. Children are expected to complete a full school day and fit into the normal timing of transport.

Where a child's day starts or finishes earlier or later the parent / carer would generally be required to make other travel arrangements outside of the Council provision.

8. Other circumstances where travel assistance will not be considered

Travel assistance will not be considered:

- on account of regular work commitments or domestic difficulties. Parents / carers are expected to take responsibility for ensuring their child attends school and that any necessary travel arrangements are made / funded;
- for extra curricular activities or between institutions within the school day. For journeys of this nature, the organising school or institution will be responsible for travel arrangements;
- to attend dental, medical or other non-educational appointments;
- in the event of sickness, where a child has to be collected early from school (or returned to residential school midweek);
- for parents / carers to attend review meetings;
- for children attending work experience;
- for children attending an induction day at another establishment;
- for children to accompany a friend home;
- following a school closure or reorganisation, other than where the application meets the eligibility criteria set out in this policy

D. Type of travel assistance / support offered

1. Usual travel assistance

The type of travel assistance offered is at the Council's discretion and will be the most cost effective option. The Council is under an obligation to minimise public expenditure. Only where there is no reasonable alternative available will travel by minibus / taxi be provided for the entire journey.

There is an expectation that all children will travel by public transport and a travel pass will be issued, unless either no public transport is available or the child's needs are such that this would not be appropriate (as decided by a relevant Officer). Parents / carers may be required to provide medical or other supporting evidence where there is a request for provision other than by public transport.

2. Other types of travel assistance

Where public transport is not available or appropriate, the following forms of travel assistance may be arranged:

- a travel pass for use on a private service contracted to the Council;
- an annual cycling allowance;
- an annual parental mileage allowance (reimbursement of reasonable travel expenses);
- travel by minibus or (in exceptional circumstances) a taxi.

3. Passenger assistants

Passenger assistants are not provided for journeys undertaken on mainstream transport. For children with special educational needs, access to a passenger assistant may be necessary if there is specific evidence of behaviour that poses an identified risk to the child's or others' safety during travel or where the child would become severely anxious or distressed without close supervision or support during the journey. The provision of a passenger assistant will be reviewed annually.

Passenger assistants are generally only provided where the child has:

- a severe physical condition;
- a medical condition requiring immediate treatment;
- severe behavioural difficulties.

Except in exceptional circumstances, passenger assistants will not be provided:

- for children attending a mainstream school;
- for hearing impaired children;

- where there are fewer than three children in the vehicle.

4. Independent travel training

Secondary aged pupils who have been assessed as requiring travel assistance because of their special needs will receive support for independence and mobility training as part of their school curriculum. This has the aim of reducing their reliance on individual transport, in preparation for adult life.

Plans to encourage independent travel must be put in place by the school and parents / carers, working in partnership to mutually agreed targets. Progress will be evidenced at each subsequent annual review. This step is regarded as a positive achievement towards the child's progress in becoming an independent traveller.

E. How to make an application and deciding eligibility

1. How to apply for travel assistance

For all mainstream children, parents or carers should make a travel application either online at www.cheshireeast.gov.uk/schooltransport or by calling the Council on 0300 123 5012.

Parents / carers will be notified of the Council's decision in writing and, if successful, assistance will be effective from the date of receipt of application or as soon thereafter as practicable. Assistance will not normally be provided retrospectively.

Children undergoing formal assessment for special educational needs will have their transport needs considered as part of that process. In cases where a child's transport need has not been assessed at the annual review or as part of the statutory assessment process, it will be necessary for a transport request form to be completed by the child's parent / carer and the SEN Inclusion Officer.

The Council will require details about the child's mobility, any special medical or behavioural conditions and any special equipment needed. The form should be passed to the Special Needs Co-ordinator at the school for endorsement, whose view will be taken into consideration when assessing the need for transport.

2. How eligibility is decided

Requests for transport will be assessed, in accordance with this policy, by officers of Cheshire East Transport or the SEN Team.

Distance

Eligibility will normally be agreed when the child meets the 'distance from school' criteria or other criteria as outlined in section B of this policy. The distance between

home and school is measured (using a digital mapping system) from the child's home gate or drive nearest to the school to the nearest available gate or entrance of the school grounds and by way of the shortest available walking route.

For applications under the 'low income' criteria, evidence that the family receives a qualifying benefit will be required prior to any travel arrangements being made.

Walking route to school

The Council expects to provide travel assistance where it has judged that, on grounds of road safety, no available walking route within the statutory distance exists. The Council recognises that not all routes are available for a child to walk to and from school. A route is considered to be unavailable when a child cannot be expected to walk to school, accompanied as necessary by a responsible person, in reasonable safety.

Guidelines for how the assessment is undertaken are published by Road Safety GB - a national road safety organisation that represents local government road safety teams across the UK and is a suggested standard by the Department for Education. This guidance is used by the Council in order to determine whether a particular route encompasses road safety hazards that may be sufficient to make the route unavailable. The assessment must take into account a variety of factors, including:

- widths of available footway, highway, bridleway etc;
- traffic flows;
- road collision records;
- crossing points;
- 'step-offs' from the highway, such as roadside verges

General points for the assessment of walking routes to schools

- a) All roads - urban and rural - are potentially dangerous. Provision of transport is considered and provided only where road conditions are exceptionally or abnormally hazardous. The Council considers that the most appropriate means of ensuring children can safely travel to school is through road safety education, and parents / carers and schools are expected to educate children in road safety matters from an early age.
- b) Parents / carers are responsible in law for ensuring their child receives an appropriate education, which in most cases includes ensuring regular attendance at school. The law also requires parents / carers to ensure a child is accompanied on their journey to and from school by an adult if necessary, with no age limit for the child prescribed in law for this responsibility. The Council expects parents / carers to make suitable

alternative arrangements if they are unable to personally accompany the child.

- c) Parents / carers are responsible for ensuring their child has suitable clothing and footwear, reflective clothing or other visibility aids, torches etc.
- d) It is expected that traffic along assessed routes will abide by all road traffic regulations, including remaining within posted speed limits, obey one-way traffic restrictions, not park in a manner which creates an obstruction to the highway etc. The Council is entitled to expect that the police will undertake enforcement action.
- e) In accordance with the law, the Council assumes that children are accompanied by an adult as necessary. Routes are not classed as unavailable solely due to any or all of the following factors. They are, however, used to assess risks and hazards that a child may face that can be avoided if the child were to be accompanied as necessary in assessing the availability of a route:
 - lonely routes;
 - routes that pass close to canals, rivers, ditches, lakes, ponds etc;
 - routes that require railway crossings if a suitable, authorised crossing is present

Further details, along with the assessment process, are contained within Appendix 1, which may be updated to reflect local interpretation of Road Safety GB guidance as required.

Special educational needs and / or a disability

When assessing entitlement to SEN transport, decisions will be based on written evidence from a range of sources, for example, Educational Psychologist, parents and school SENCO. A copy of the Special Educational Needs Transport Assessment Form and Guidance Notes are available on the Council's website or from the SEN team.

Children / young people who continue their education after the age of 16, whether at school or college, can apply for travel assistance under this policy. Support with transport may be provided at least up to the age of 21 and for a maximum of three years. Transport will only be considered to the nearest appropriate school or college offering the course or similar.

Where SEN transport has not been agreed, a review of the decision may be requested. Parents / carers will need to set out details to confirm why they are requesting a review of the decision and should include which aspects of the Council's policy they believe have not been followed correctly. Further details about the Council's review process can be found in section E2 and also Appendix 2.

3. Setting up travel arrangements

When eligibility is agreed, the Council will use the information provided to determine the most suitable type of transport (as defined in section D). The Council will take into account the needs of the individual child, their ability to travel independently, existing transport provision to the same school as well as our responsibility to procure the most cost effective suitable arrangements.

When arrangements are agreed, the Council will notify the parent / carer by sending them:

- a) details of the transport service to be provided for their child;
- b) a code of conduct / behaviour for children;
- c) useful information and contact details.

The Council will aim to make travel arrangements within 14 days, but this may take longer during busy periods. Parents / carers will be responsible for making alternative travel arrangement in the interim.

4. Changes to circumstances

If the travel arrangements made by the Council are not considered appropriate as a result of an accident, planned surgery or an illness, then a request for revisions to the transport arrangements must be made in writing to the Medical Needs Team Manager, providing the relevant information and giving a minimum of 5 days notice.

In all cases, the Council would seek information as to the possible options and associated costs. These may include:

- a) placing the child on a different route;
- b) providing a separate or different vehicle;
- c) providing a specialist vehicle with medical support;
- d) providing a passenger assistant.

If there has been a significant change in circumstances, such as a change of school or home address, a change in parent / carer circumstances or a change in the child's needs, an immediate review of entitlement and provision may be required. It is the responsibility of the parent / carer to promptly notify the Council of any change in circumstances that may affect the provision of travel assistance.

5. Deciding on travel arrangements

The Council will endeavour to follow established best practice in the provision of the most cost effective and appropriate travel assistance for each entitled child, taking into account their individual needs. The Council will make arrangements that enable

children to reach school without such stress, strain or difficulty that would prevent them from benefiting from the education provided.

Assisted travel arrangements will be designed to allow the child to travel in reasonable safety and in reasonable comfort. Factors considered will include:

- the child's home location;
- the location of the school the child is attending;
- the number of other children living in the area and attending the same school (or another school on route to that school);
- traffic conditions;
- the availability and accessibility of public transport and / or contract services;
- other operational issues that might affect the travel arrangements.

Priority will be given to travel assistance solutions that help to develop travel independence skills, so as the child grows older, they are better equipped to lead independent lives.

6. Pick-up / set down points and timing

Children will be picked-up and set-down from a convenient point or, in exceptional circumstances, from home (where the child's needs require this). The Council will notify parents / carers of the arrangements made.

A child will normally be expected to walk a reasonable distance to and from home to meet their transport. This will not normally exceed:

- a) 0.5 miles for a child attending primary school
- b) 1 mile for a child attending secondary school

It is the responsibility of parents / carers to ensure that their child is ready and waiting at the agreed pick-up point on time. Drivers are instructed not to delay longer than 5 minutes at any pick up point in order not to inconvenience other passengers. The Council will not make alternative travel arrangements if the transport is missed.

Parents / carers are responsible for their child's safety in getting to and from the pick-up / set-down point. They are also responsible for their child whilst waiting for the transport and when they leave the transport at the end of the day.

If the child has special educational needs, then parents / carers have a responsibility to present their child to and to greet the child from the transport (unless by prior notice that, due to medical conditions, they are unable to do so - this should be indicated on the application form).

Parents / carers may not normally vary the agreed pick up / drop off arrangements. Occasional minor variations may be possible, by agreement with the Council. Variations are unlikely to be agreed where the change would have a negative impact on other passengers or increase the cost of the journey. Passenger assistants and drivers do not have the authorisation to agree route variations.

A child's pick up / set down arrangements will be reviewed annually and children with special educational needs will be encouraged towards independence.

7. Maximum journey times

Best practice suggests that the maximum each way length of journey for a child of primary school age might be considered to be 45 minutes; whilst a child of secondary school age might be expected to travel up to 75 minutes each way. However, a child's special educational needs and / or disability might be such that it implies a shorter maximum journey time.

Journey times may exceed these limits for exceptions such as:

- a) exceptional traffic or weather conditions;
- b) attendance at a special school;
- c) attendance at a remote boarding / residential school;
- d) attendance at an alternative school / provision following exclusion.

The Council may determine lower reasonable maximum journey times in individual cases, notwithstanding the exceptional circumstances detailed above.

8. Reimbursement of reasonable travel costs

Where entitlement to travel assistance exists and there are difficulties in arranging public or other suitable transport, or where it would be exceptionally expensive, the Council may agree to reimburse reasonable travel costs, e.g. a mileage payment to parents / carers who are willing to transport their child to school in their own vehicle.

Parents are under no obligation to accept the offer of reimbursement of travel costs and should contact the Council or visit the website for further information.

9. Sustainable travel

The Council has legal duties, under the Education and Inspections Act 2006, to promote sustainable modes of travel for children of compulsory school age and young people of sixth form age. These duties include:

- Produce sustainable modes of travel strategy and summary, on an annual basis, published on the website by 31 August each year;

- Assess the school travel needs of all children and promote sustainable modes of travel to school.

The Council's Sustainable Travel Policy will be updated and published in accordance with Department for Education (DfE) guidance and timescales.

10. Spare seat scheme

Where a vehicle is contracted to provide travel assistance for entitled children, and no other public transport service exists, the Council will consider applications for 'spare seats' for non-entitled children. If there are spare seats available, these may be purchased by parents / carers at a fixed charge. This charge will be set at a rate inline with the cost of provision and will be reviewed annually. A spare seat will be withdrawn (with a minimum of 1 week's notice) when:

- a) the seat is required for an entitled child;
- b) the service is withdrawn;
- c) the seating capacity of the vehicle is reduced

The withdrawal or unavailability of a spare seat will not be considered as grounds for an appeal for assistance from the Council. Parents / carers should consider whether they are likely to be able to make and fund their own travel arrangements should either of these occur, prior to them taking up a school place or moving house.

The Council will not be responsible for any alternative travel arrangements for any non-entitled children who are affected by changes to school contract routes.

Full details of the scheme, along with current charges will be published on the Council's website.

11. Behaviour on transport

The Council may decide to impose a temporary ban or withdraw travel assistance, as it considers appropriate, in the case of any child whose behaviour during the journey to or from school is not of an acceptable standard. In addition, schools can impose a number of sanctions ranging from detention to exclusion in order to deal with persistent misbehaviour on school transport.

The Council publishes a code of behaviour for children, which can be found on the website. This code will be sent to children at the time that travel arrangements are confirmed.

F. Review of eligibility / provision and withdrawal of / changes to travel assistance

1. Review of eligibility

Generally, travel assistance will be awarded for entitled children until such time that they reach the end of their statutory education at the school attended or are due to transfer from primary to secondary school.

Travel assistance will be reviewed and, where appropriate, automatically renewed by the Council each year without the need to re-apply (with the exception of non-entitled children who purchase a 'spare seat').

In the event of a change of address or school taking place earlier than the above, notification must be provided to the Council so that the child's eligibility can be re-assessed in accordance with the policy.

2. Route planning and route reviews

The Council regularly reviews transport provision and individual transport routes, which may result in a change of arrangements to be provided.

Consultation with parents / carers will not normally take place as part of a route review. This is to enable route reviews to be carried out in a timely and efficient manner and to avoid raising parental expectations that preference for a particular form of provision will override cost-effectiveness or efficiency.

Parents / carers may receive notification at any time that the type of travel assistance for their child is to be changed as a result of a review. Changes may involve:

- a) new pick-up and set-down points;
- b) changes to timings;
- c) changes to the contractor employed;
- d) withdrawal of a passenger assistant;
- e) mode of transport, e.g. transfer from taxi to bus / public transport

Wherever possible, notice will be given to parents / carers of any proposed long-term changes to transport provision, but some may need to be made at very short notice, for example as a result of sickness, road closures or the termination of a contract with a vehicle operator.

Children who are not entitled to transport assistance, e.g. children who have purchased a place on existing transport under the Council's spare seat scheme are not included in the reviewing or planning of transport routes.

3. Changes to travel assistance for children with SEN and / or a disability

The need for travel assistance and the type of provision required will be reviewed on a continuing basis and at least once a year. Where possible, the review will be undertaken following the child's statutory annual SEN Statement review. Any changes will be implemented from the beginning of the next school term, or sooner by mutual agreement.

Where a child's special educational needs indicate that he or she is particularly sensitive to change, the anticipated impact of any proposed change will be taken into consideration. This will involve discussions with the school and / or the parent / carer. The opinion of the school will be sought prior to any changes to transport provision for a child with SEN.

Where parents / carers are unhappy with the type of travel assistance being offered for their child, a review of the decision may be requested. Parents / carers will need to set out details to confirm why they are requesting a review of the decision and should include which aspects of the Council's policy they believe have not been followed correctly. Further details about the Council's review process can be found in section E2 and also Appendix 2.

4. Withdrawal of travel assistance

For children with a statement of special educational needs, eligibility may end following the conclusion of the Annual Review Process. If this is the case, travel assistance will be withdrawn following a 6 week notice period, or at the end of the summer term, whichever is sooner.

Where, for any reason, travel assistance has been approved / provided in error, the Council reserves the right to withdraw that provision. A minimum of 12 weeks notice may be given to allow parents / carers sufficient time to make alternative travel arrangements.

G. Complaints, appeals and contact details

Decisions as to the eligibility for travel assistance, the mode of transport and other practical matters of travel assistance will be taken by the Council's officers with particular authorisation to do so.

1. Complaints

Should a parent / carer have cause for complaint about the service provided for their child, they should first take the matter up informally with the officer or department responsible. If the complaint is not resolved satisfactorily, it may be escalated via the

Council's Corporate Compliments, Suggestions and Complaints Policy. A complaint can be made in the following ways:

- online at www.cheshireeast.gov.uk/customerfeedback
- by telephone - 0300 123 5038
- by email to letusknow@cheshireeast.gov.uk
- in writing to Let Us Know, Customer Relations Team, Cheshire East Council, Westfields, Middlewich Road, Sandbach, CW11 1HZ
- in person at any of our Customer Service Centres

Further details about how to make a complaint can be found on the Council's website: www.cheshireeast.gov.uk

2. Review and appeals process

Stage 1

If a parent / carer disagrees with the Council's decision to refuse eligibility for travel assistance for their child, they may wish to request a review of the decision. Any requests for review must be made in writing (within 20 working days of receipt of the Council's decision letter) and should include details of any personal and / or family circumstances the parent / carer believes should be considered.

A senior officer will then review the decision within 20 working days of receipt of the request and will provide a detailed written response.

Stage 2

If a parent or carer is dissatisfied with the Council's response following the stage 1 review, then they have 20 working days to escalate the matter to stage 2 and request that their case is considered by the Council's Transport Appeals Sub Committee. The Sub Committee will consider written and verbal representations from parents / carers and officers within 40 working days. Notification of the outcome will be given in writing.

Where the child in question holds a statement of special educational need, it may be that a disagreement about transport is part of a wider question of school provision and placement. In this case, it may be necessary for the matter to be considered by the Health, Education and Social Care (HESC) Chamber of the First-Tier Tribunal. Although this body does not hear appeals specifically about transport, it may consider it as part of a wider appeal. Officers of the SEN Assessment and Monitoring Team will discuss the appropriate means of appeal in each case as necessary.

Full details of the appeals process is attached to this policy, see Appendix 2

3. Contact details

Queries about eligibility for transport for a child with special educational needs should be directed to the SEND Assessment and Monitoring Team either by email to senteam@cheshireeast.gov.uk, by telephone on 01625 378042 or in writing to SEND Assessment and Monitoring Team, Cheshire East Council, Macclesfield Town Hall, Market Place, Macclesfield, SK10 1DX.

For general mainstream eligibility or other school transport enquiries, you can visit the Council's website at www.cheshireeast.gov.uk/schooltransport where you will find full details, along with a list of frequently asked questions. Alternatively, you can email schooltransportenquiries@cheshireeast.gov.uk or call us on 0300 123 5012.

4. Glossary of terms

Academic Year, School Year

The academic year is deemed to start on 1st September in any given year and to end on 31st August in the following calendar year. In the exceptional case of a school whose academic year begins in August, the Council will consider whether it should take the date when that school's academic year starts as being the start of the academic year for a child attending that school.

Address, Home Address

For the purposes of home to school transport, the home address will be deemed to be where the child predominantly resides, normally with someone who holds parental responsibility. Proof of residence may be requested to confirm that a child and the child's family are resident at a specified address. The following are examples of documents that may suffice as proof of residence:

- Child or Working Tax Credits
- registration on the electoral roll
- utility bills
- bank statements
- driving licence
- mortgage or tenancy account details

The list of documents above is not exclusive and the Council may ask for permission to gain access to other local authority information, for example Council Tax or Housing Benefit records. If doubt exists, the Council may also require a parent to complete a formal statement to certify the home address. This would be discussed at the appropriate time.

Authority, Local Authority, Council

This is Cheshire East Council. Decisions of the Council are carried out in the name of the Council by its officers.

Child, Children

A child or young person of statutory school age.

Cared for Children and Children who were previously Cared for.

A 'cared for child' is a child who is in the care of a local authority or provided with accommodation by that local authority (as defined in section 22 of the Children Act 1989).

Children previously 'cared for' (as defined above) are those who immediately after being 'cared for' became subject to an adoption, residence, or special guardianship order. An adoption order is an order under section 46 of the Adoption and Children Act 2002. A 'residence order' is as an order settling the arrangements to be made as to the person with whom the child is to live under section 8 of the Children Act 1989. Section 14A of the Children Act 1989 defines a 'special guardianship order' as an order appointing one or more individuals to be a child's special guardian (or special guardians).

Disability

From 1 October 2010, the Equality Act replaced most of the Disability Discrimination Act (DDA) 1995 and 2005. However, the Disability Equality Duty in the DDA continues to apply. The Equality Act 2010 aims to protect disabled people and prevent disability discrimination by ensuring that reasonable adjustments are made to accommodate the needs of all individuals. Under the Act, a person has a disability if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities.

Dual Registration

The law provides for children to be registered at two separate schools in cases where a child has no fixed abode for the reason that a parent is engaged in a trade or business of such a nature as to require travel from place to place.

Alternative provision

For some children, an education outside of school can be the most appropriate option. When this is arranged by LAs, schools or a group of schools, it is called alternative provision. It can range from pupil referral units (PRUs) and further education colleges to voluntary or private-sector projects.

In individual exceptional circumstances, where an alternative form of education has been agreed, the term will be taken to include such agreed sources of alternative provision.

Boarding/Residential Schools

Boarding/Residential schools are those that provide overnight accommodation arranged or provided by the school, at the school or elsewhere.

Mainstream School

A school that is not a special school for children with special educational needs.

Private Schools

Private schools may be either non-maintained or independent, according to their foundation and legal status and receive their funding either direct from parents, from charitable trusts or from places purchased by local authorities. Generally, although not exclusively, an independent school is usually one run privately for profit whereas a 'non-maintained' school is run 'not for profit' usually by a charitable body.

Publicly Funded Schools

Maintained schools are funded by central government via the local authority and do not charge fees to students. The categories of maintained schools are: community, community special, foundation (including trust), foundation special (including trust), voluntary aided and voluntary controlled. There are also maintained nursery schools and pupil referral units.

Academies and free schools are publicly funded independent schools. Some academies, generally those set-up to replace underperforming schools, will have a sponsor. Sponsors come from a wide range of backgrounds including successful schools, businesses, universities, charities and faith bodies. Academies receive their funding directly from the Education Funding Agency (EFA) rather than from local authorities.

University Technical Colleges (UTCs) are Technical Academies for 14-19-year-olds. They offer technical courses and work-related learning, combined with academic studies. Each UTC is sponsored by a university and industry partner and responds to local skills needs. They provide young people with the knowledge and skills they need to progress at 19 into higher or further education, an apprenticeship or employment.

Studio Schools cater for 14 to 19-year-olds, delivering project-based, practical learning alongside mainstream academic study. They are small schools - typically with around 300 pupils - delivering mainstream qualifications through project based learning. Students work with local employers and a personal coach, and follow a curriculum designed to give them the skills and qualifications they need in work or to continue in education.

The Funding Agreement between the establishment and the Secretary of State provides the framework within which Academies, Free Schools, UTCs and Studio Schools operate.

Special School

A school that provides education for children and young people with complex or specific needs which generally cannot be fully met in a mainstream school.

Qualifying Schools / Nearest Suitable School

The legislation defines qualifying schools as being:

- community, foundation or voluntary schools;
- mainstream academies;
- free schools;
- community or foundation special schools;
- special academies and free schools;
- University Technical Colleges
- Studio Schools
- non-maintained special schools;
- pupil referral units;
- nursery schools maintained by a local authority;
- city technology colleges, city colleges for the technology of the arts or an Academy;
- independent school (if it is named as the local authority's preferred placement in the pupil's statement of special educational need).

For the purpose of secondary school transport, the qualifying school includes the three nearest schools to the child's home address (and within 2-6 miles) for low income families.

In relation to a child with SEN, an independent school (other than a CTC, CCTA or Academy) will be a qualifying school if it is the only school named in the child's statement, or it is the nearest of 2 or more schools named in the statement. In the case of special education, it will be the nearest suitable special school with places available that can provide an education appropriate to the age, ability and aptitude of the child and any special educational needs that the child has as specified in his or her statement of special educational need.

A school designated by the Council as the appropriate school for a particular child e.g. a permanently excluded child, a child with a statement of special educational needs,

a child in the care of the local authority and placed at a particular school or a child placed at a particular school under the Fair Access Protocol, will normally be deemed to be the nearest suitable school for the purposes of this policy.

Low Income Families

Children from low-income groups or families are defined in legislation as those entitled to free school meals, or whose families receive the maximum level of Working Tax Credit. Annual confirmation of low-income status is required and assistance will usually be withdrawn if a family ceases to hold low-income status. To qualify the child will need to be entitled to free school meals because their parent / carer receives one of the following benefits:

- Income Support;
- Income Based Job Seekers Allowance;
- Employment Support Allowance (income related);
- Child Tax Credit with income less than £15,860.00 (unless you claim Working Tax Credit) - form TC602(A);
- Support under Part VI of the Immigration and Asylum Act 1999;
- Guaranteed Element of State Pension Credit

Out-of-County

In reference to a school, this means a school which is neither maintained by Cheshire East Council nor is an academy, free school, UTC or Studio School within the Council's boundary. In reference to a place it means a place located outside the administrative boundary of Cheshire East Council.

Parent or Carer

In this Policy, the parent will be taken to be the person with whom the child or student predominantly resides. This can include a person who is not a parent but who has parental responsibility or care of the child or student. If the person is not the birth parent or adoptive parent, then evidence may be sought to ascertain that the legal basis of the relationship. In this policy the terms parent or parents are taken to include carer or carers.

Special Educational Needs

A Statement of Special Educational Need is a statement made by the local authority under Section 324 of the Education Act 1996 that specifies the special educational provision required for that child. Schools must admit a child with a **Statement of Special Education Needs** that names their school.

Statutory School Age

Children reach statutory school age at the beginning of the term following their 5th birthday. In compliance with legal requirements, children may start school in the reception class in the September following their 4th birthday. Parents / carers can request that the date their child is admitted to the primary school is deferred until later in the school year or until the child reaches statutory school age in that school year. To help younger children adjust, schools may phase full-time admission, admitting these children on a part-time basis. Any such arrangements are decided at school level.

Statutory school age ceases on the last Friday in June in the school year when the young person reaches the age of 16. No account is taken of the National Curriculum Year in which a child is being educated when determining the year in which compulsory school ages ceases.

Raising the Participation Age (RPA)

The Education and Skills Act 2008 raises the age at which young people are required to participate in education or training. This does not necessarily mean they will have to stay on at school after Year 11 as they will have a choice about how they want to participate post-16, which could be through full-time education, such as school or college; work-based learning, such as an Apprenticeship; or part-time education or training if they are employed, self-employed or volunteering for 20 hours or more a week.

This change applies from 2013, when young people will be required to stay in education or training until they are 17 years of age and increases until they are 18 from 2015.

Any enquiries regarding this document should be sent to us at:

www.schooltransportenquiries.gov.uk

Assessment of walking routes to schools

1.0 Description of the Assessment Process

- 1.1 All assessments will be undertaken in accordance with the current guidance note issued by Road Safety GB in 2012 'Assessment of Walked Routes to School' and will be carried out by a professional safety assessor.
- 1.2 The assessment will assume that pupils are accompanied by a responsible person. Assessments will be carried out at the times the pupils are expected to travel to and from school and any required traffic counts will be undertaken at the busiest time of the day.

Route Overview

- 1.3 The route overview will give a general description of the route to be assessed and include a map as well as photographs highlighting any areas of concern. The following details will also be taken into account:
 - Weather at the time of the assessment.
 - Ages of the pupils and the times they are expected to walk the route.
 - Recorded collision data for the previous 5 year along the route.
 - Length / names of the roads on the route and any relevant characteristics, for example, whether the route is rural / urban, single / dual carriageway, A/B class, one-way, speed limit, and whether the route is traffic calmed.
 - Any features along the route that may need re-assessment in the future (e.g. likely change in traffic patterns or vegetation that may compromise available footway width).
 - Consideration of any alternative routes.

Footway Assessment

- 1.4 The assessment will take into consideration whether the pupils will be required to walk along a route with either a pavement, 'step-off'² or at the side of the road. The following information will be included:

² A 'step-off' is where pedestrians can step clear of the roadway onto a reasonably even and firm surface such as a roadside verge

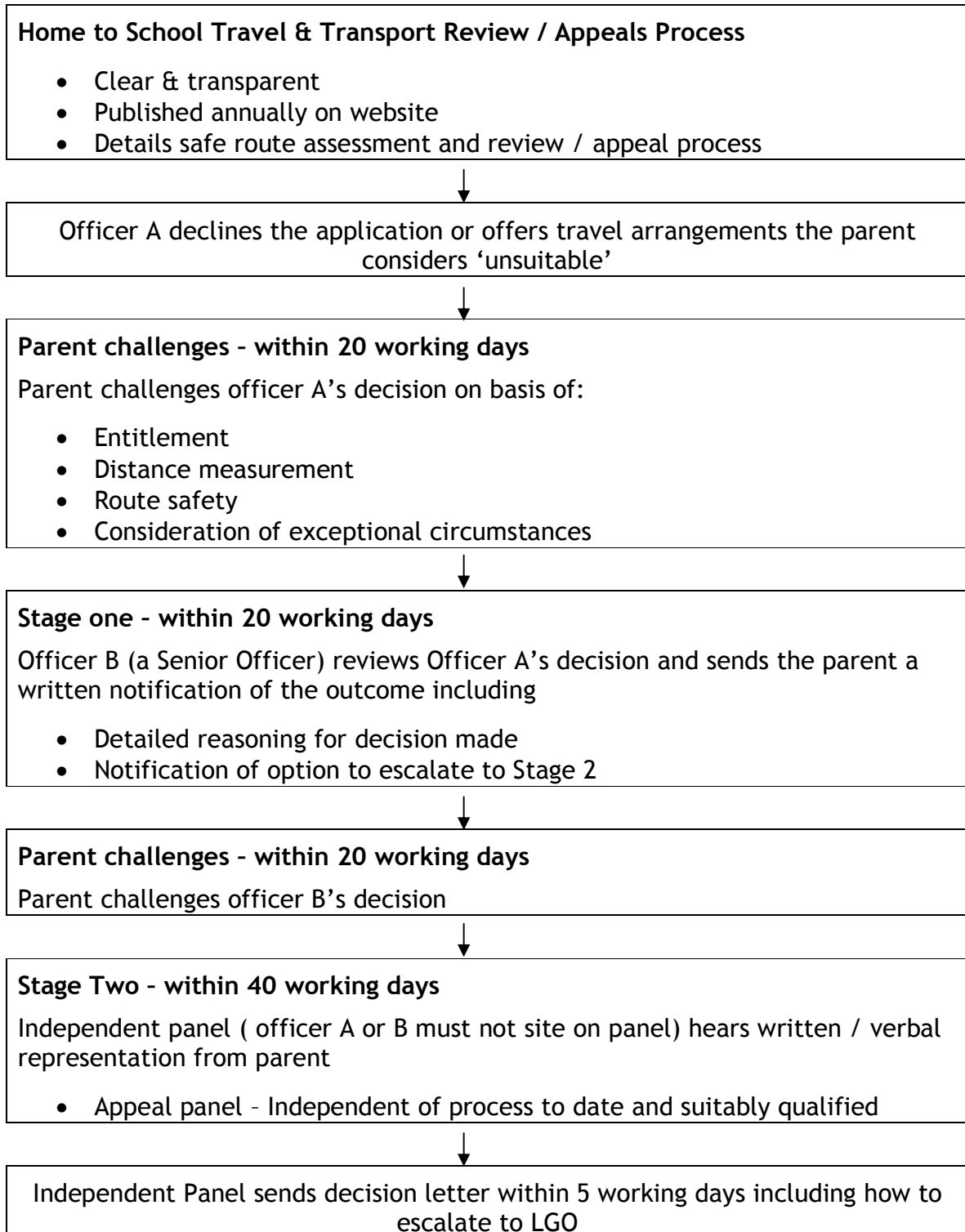
- A record of whether there is a footway, which side of the road it is situated and if so, it's general availability, if it is of reasonable condition with even surface and sufficient width. The minimum width required will generally be deemed to be 0.5m, although each case is treated on its own merits and widths may be unacceptable or acceptable if wider or narrower than this guidance.
- If there is no pavement then the availability of 'step-offs', volume of traffic and sight lines will be taken into consideration.
- If there are no 'step-offs' then the volume of traffic and sight lines will be taken into account. The following table gives a general guidance as to the expected traffic volume on narrow roads without 'step-offs' or footways.

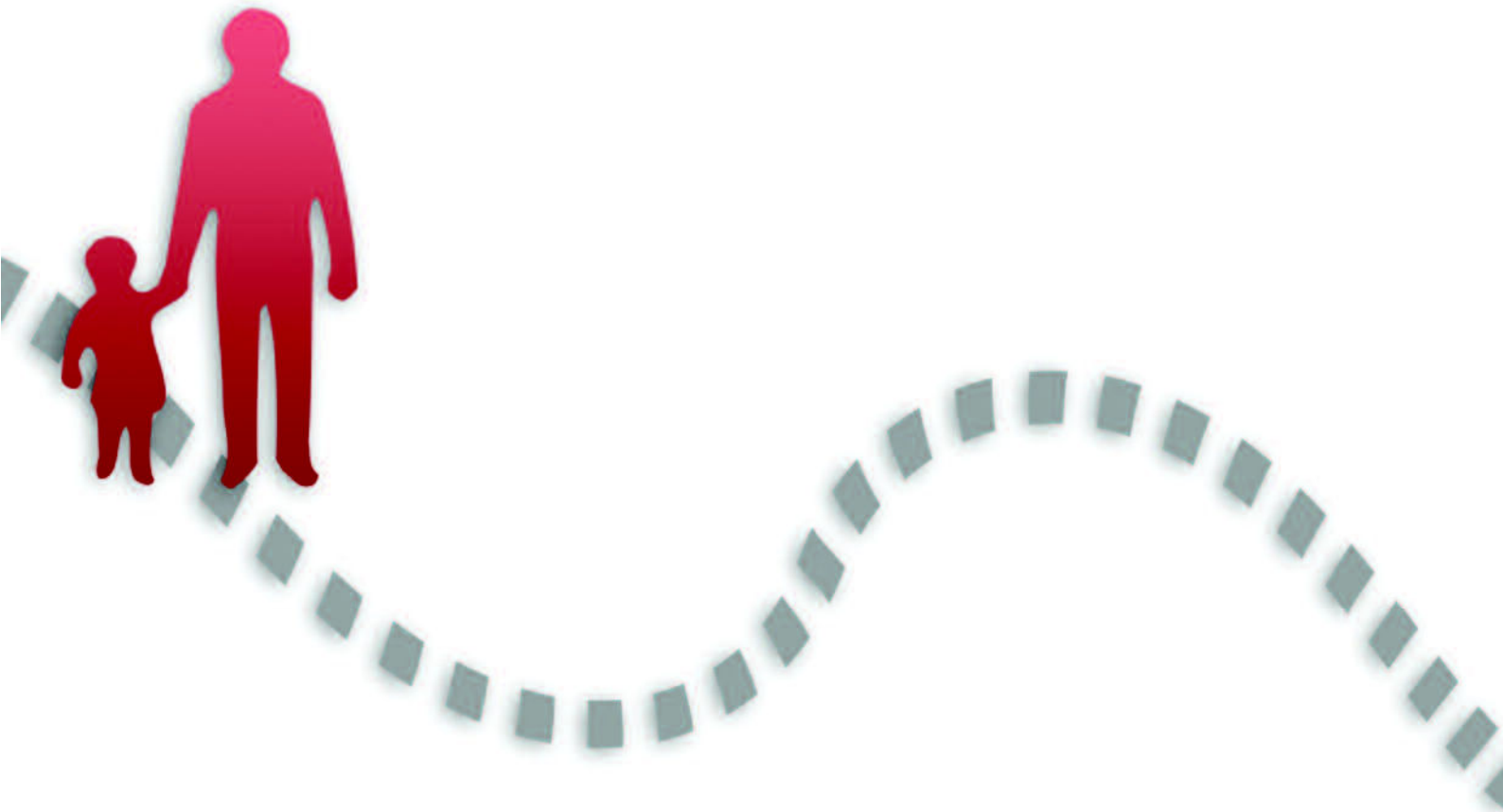
Acceptable maximum length of single sections of road without verges or refuge before broken by verge, 'step-off' or bend	Acceptable number of vehicles per hour by road width			
	< 3.5m width	3.5 - 4.5m width	4.5m-5.5m width	>5.5 m width
10 meters	201-240	301-360	401-480	501-600
15 meters	161-200	241-300	321-400	401-500
25 meters	121-160	181-240	241-320	301-400
35 meters	81-120	121-180	161-240	201-300
55 meters	61-80	91-120	121-160	151-200
75 meters	41-60	61-90	81-120	101-150
120 meters	31-40	46-60	61-80	76-100
160 meters	21-30	31-45	41-60	51-75
240 meters	11-20	16-30	21-40	26-50
300 meters	6-10	9-15	11-20	13-25
500 meters	1-5	1-8	1-10	1-12

Crossing Assessment

- 1.5 The assessment will also note if there is a need to cross the road and whether the type of road to be crossed is a main road, significant side road, quiet side road or vehicular access to service area. The assessment will also take into consideration whether there are any crossing facilities such as zebra or puffin crossings, traffic islands or dropped kerbs. Where there is a controlled crossing (zebra, puffin, pelican or toucan crossing) traffic counts will not be required. Where there is need to carry out further assessment the following will be taken into account.
- Where there is two way (one-way of a dual carriageway or where there is a pedestrian traffic island) traffic flow of below 240 vehicles per hour the road is assessed as safe to cross. This is equivalent to 1 vehicle every 15 seconds and allows a reasonable gap time to cross a 7 m wide road at a walking speed of 3 ft (0.91m) per second. A record of any vehicle counts will be kept.
 - Where traffic counts are above 240 vehicles per hour a gap count will be required. This will record the number of gaps in each 5 minute period that are longer than the road crossing time, using 3ft (0.91m) per second as the walking speed. Four gaps in each 5 minute period indicated a road that can be crossed without too much delay. Longer gaps will be classified as multiple gaps rather than just one gap.
 - For all roads that need to be crossed there will need to be at least 4 seconds sighting time for drivers to see pedestrians and visa versa.
- 1.6 Routes that are traffic free (greenways, public rights of way, etc) will generally be considered as 'available' as long as the path is of reasonable condition and sufficient width.

Home to School Travel & Transport Review / Appeals Process Flowchart





Assessment of Walked Routes to School

Preface

These Guidelines were produced on behalf of Road Safety GB by:

Richard Hall, Road Safety GB
Josie Wride, Road Safety GB
Eileen Murphy, Road Safety GB
Jo Hodgson, Road Safety GB
Kevin Clinton, Royal Society for the Prevention of Accidents

They replace the version published in 2002 by LARSOA

The working group thanks everyone who contributed to the Guideline's development.

The Guidelines comprise three sections:

- Introduction and the Principles used in the Guidelines
- Route Assessment Procedure
- Appendices giving legislation and case law

These Guidelines have been compiled based on existing legislation, best practice, health and safety and case law. They refer to various statutory regulations. These were correct at December 2011, but officers should check for amendments that may have been issued since this document was published.

The advice given in these Guidelines is believed to be correct at the time of publication. While every care has been taken to ensure accuracy within this document, Road Safety GB or its advisors accept no liability whatever for the information given.

Authorities should consider seeking elected Members' approval if they propose to deviate from these Guidelines.

Road Safety GB



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Section 1

Introduction and Principles

These guidelines are to help officers carry out assessments on walked routes to school where the journey is below the statutory distance. The assessments are normally required where it is claimed that the route is not safe and therefore the Local Authority should provide free transport.

The document contains a method of assessing walked routes to school and relevant extracts from Acts of Parliament and case law relating to transport to school. This should be taken as a basis from which each local authority can develop their own policy that includes what other factors, if any, are taken into account when offering free transport to those children that live within the statutory distance.

The law relating to schools transport and walked routes to school apply in England and Wales, but may differ in Scotland and Northern Ireland.

The Duty of the Local Authority to provide transport

The legal situation regarding school transport is based on a combination of Education Acts going back over 60 years. The relevant section of each Act is included in the appendices to this document. The most recent legislation states that Local Authorities should make “such travel arrangements as they consider necessary in order to secure that suitable home to school travel arrangements ... are made and provided free of charge ... to the child.” (Education & Inspections Act 2006 s508B (Appendix 1))

Parents must make sure all registered pupils regularly attend school. If they do not, court action may be taken against them unless they can prove that the child’s non-attendance is because the pupil is not within walking distance and the LEA has failed to provide transport. Walking distance is defined as up to 2 miles for a child under 8 and up to 3 miles for older children. The walking route must be measured by the “nearest available route” from where their home property meets the highway to the nearest school gate.

The Education and Inspections Act 2006 means that since September 2007, the right to receive free school transport has been extended:

- Children aged between 8 and 11 from low income families are also entitled to free transport if they attend their nearest school even if this is more than two miles away.
- In September 2008, the right was extended again to include Secondary aged pupils (age 11-16) from low income families who attend one of the nearest three schools to their home and this is between 2 and 6 miles away, or
- they attend the nearest school preferred on the grounds of religion or belief that is between 2 and 15 miles from their home. Details of the regulations surrounding religion and belief are included in Appendix 8.

Section 1

Introduction and Principles (cont)

Principles used in these guidelines

Nearest Available Route

The question of what is the nearest available route has been disputed since the beginning of this legislation. Case law has found that distance and not safety is the appropriate test (*Shaxted v Ward* 1954 (Appendix 4)) and that a child should be “accompanied as necessary” (*Rogers and another v Essex CC* 1986 (Appendix 6)).

Case law has found that assessments must look at the relationship between pedestrians and traffic only. Personal safety issues of children travelling alone are not considered. Local authorities are not legally obliged to provide free transport just because parents perceive the route to be unsafe on the grounds of personal safety and security.

Accompaniment of Children

In the case of *Regina v Rogers and another* (Appendix 5), the judgement by the House of Lords supported the line consistently taken by Essex County Council that for a route to be available, it must be a route along which a child, accompanied as necessary, can walk with reasonable safety to school. A route would not fail to qualify as “available” because of dangers which would arise if the child was unaccompanied (in this case the route was across common land).

Age of Pupil and Nature of Route

Section 509 (4) of the 1996 Education Act declares that the local education authority should take into account the age of the pupil and nature of the route (or alternative routes) they are reasonably expected to take when considering whether arrangements for travel are required (Appendix 2).

This is covered in a DfES document “Home to School Travel and Transport Guidance” published in 2007 (paragraphs 81 to 86). Whilst this guidance states that local education authorities should take a range of factors into consideration when conducting walking route risk assessments neither the Act nor the guidance provides further information on how these factors should be taken into account.

Although they are broadly in line with this Road Safety GB document local authorities will need to decide for themselves how to apply the DfES guidance, also considering earlier Acts and case law.

The officer carrying out the assessment will need to use their professional judgement when applying these guidelines.

Behaviour of the road user

It is presumed that all road users will behave reasonably and responsibly.

Street lighting

The presence or absence of street lighting on a route is not considered to be a factor.

Section 1

Introduction and Principles (cont)

Road Accident Record

The accident record for the route over a minimum period of 3 years should be taken into consideration. The existence of an accident record does not necessarily indicate that the route is unsafe for the journey to school, this would depend on the type, nature and relevance of the incidents. Advice from colleagues working with road casualty data may need to be taken.

Traffic flow

Where the two way (one way of a dual carriageway) traffic flow is below 240 vehicles per hour the road is assessed as safe to cross. This is based on the original County Road Safety Officers Association criteria and is equivalent to 1 vehicle every 15 seconds and allows a reasonable gap time to cross a 7m wide road at a walking speed of 3ft per second. A written record of any vehicle counts should be kept.

If the site assessment shows that traffic flow limits the opportunities to cross then a gap count could be considered.

Definitions

Available Route

An available route is any highway or public right of way that is maintained by the Local Authority. Maintained in this sense means a responsibility to keep open to the public and includes any highway, public right of way or other path or track over which public access is permitted and the use of which does not constitute a trespass. This includes roads, surfaced or un-surfaced, footpaths, bridleways or public land.

Footway

A footway or roadside strip is one that is of adequate usable walking width for the circumstances. To be usable it should be clear of overgrowth, ie shrubs and trees obstructing the footway.

It may be more cost effective to clear and maintain a footway than to provide free transport.

Highways

Highways include all public rights of way and public roads.

Public bridleway

Bridleways are highways over which the right of way is on foot, bicycle or on horseback.

Public byway

Byways are open to all traffic, however they are primarily used for walking and riding.

Public footpath

Footpaths are highways over which the right of way is on foot only.

Public Right of Way

Public Rights of Way are public footpaths, bridleways and byways open to all traffic.

Section 1

Introduction and Principles (cont)

Public roads

Roads include motorways, trunk roads, A, B and C class roads as well as other unclassified roads that may or may not be surfaced.

Pupil

A child of compulsory school age (that is between 5 and 16 years old). Local Authorities may have their own policies on help with transport for young people over the age of 16.

Sight Lines

A sight line is important when crossing the road or walking along the roadway. For a route to be non-hazardous:

- lines of sight for a pedestrian must be enough for them to see oncoming vehicles and have sufficient time to safely take avoiding action. Vehicle speeds on individual roads would need to be taken into account.
- lines of sight for a driver (measured from a height of 1.05m) must be enough for them to see pedestrians walking along the carriageway and have sufficient time to safely take avoiding action at whatever speed they are travelling. As an absolute minimum this must be the overall minimum stopping distance for traffic at the recorded 85%ile speed of traffic on that road. (85%ile speed is the speed below which 85% of vehicles travel in normal free flow conditions – a speed survey may need to be carried out to find this information).

Note: Mean speeds may be used as an alternative to the 85%ile.

Visibility

The unobstructed distance you can see when measured from the viewpoint of a driver, measured at 1.05m from the road surface.

The unobstructed distance a pedestrian can see from the point at which they have to cross the road or can see traffic when walking on the roadway.

Step off

A “step off” is where pedestrians can step clear of the roadway onto a reasonably even and firm surface such as a roadside verge.

Traffic Interrupter

Any feature in the highway or environment that create gaps in the traffic flow eg traffic lights, roundabouts etc.

Section 2

Route Assessment Procedure

Points to Consider

The whole route from the child's home to the school should be assessed at a time children would normally be travelling to and from school.

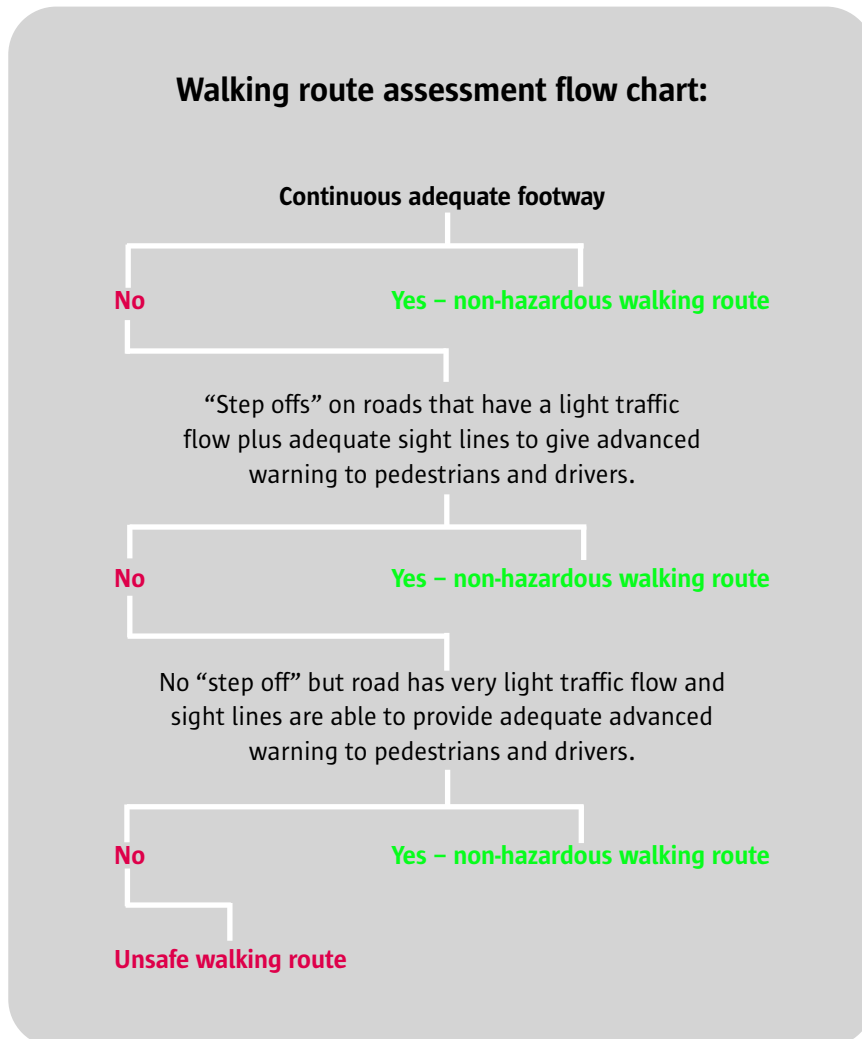
When assessing the safety of a potential walking route, the following points should be considered.

- When assessing the safety of an “available route”, only the potential risk created by traffic, the highway and topographical conditions should be considered (1).
- Each case must be considered on its own merits. Where possible the assessment should be carried out on foot.
Using on-line street imagery may indicate a route is hazardous, however a site survey may also be necessary. Even if it suggests a route is **not** hazardous a site survey must still be carried out.
Note: you should be aware of how old the imagery is as it may not show recent changes to the route.
- It is assumed that children are accompanied as necessary by a responsible parent or carer (2).
- A footway, roadside strip of reasonable width and condition, a public footpath or bridleway will all normally be assumed to provide an available route for that part of the journey (3).
- On a road with light traffic flow a verge that can be stepped on by a child and accompanying parent when traffic is passing can normally be assumed to provide an available route.
This is known as a “step off” (4).
- It is assumed that the road will be crossed to use a footway or road side strip (5).
- Many available routes may lie along roads that have neither a footway nor verge. On these roads the width of the carriageway, traffic speed and type of traffic (e.g. frequent long or heavy goods vehicles) as well as visibility/sight lines that may be affected by sharp bends, high hedgerows or other obstructions must be considered. It is likely that if a route is found to be lacking in ‘step offs’ then it is also likely to have issues with adequate visibility – the features that affect the availability of ‘step offs’ often impact on visibility – hedges, gradients etc. However, there may be exceptions to this.
- Where roads need to be crossed, the availability of crossing facilities such as central refuges, pedestrian crossings or traffic signals should be taken into consideration. Where no crossing facilities exist the risk assessment of the route should include consideration of each road crossing, bearing in mind traffic speed and flows, sight lines etc.
- The road casualty record along the route.
- A written record of the assessment should be kept.

Section 2

Route Assessment Procedure

- A plan showing the route should be attached to each assessment.
- These guidelines cannot cover every eventuality and situation as there are many subtle variations in the features of routes.



- (1) Available route – see definitions, page 6.
- (2) Case law – Regina v Devon County Council refers to “accompanied as necessary” (see appendix 7).
- (3) Case law – Rogers and another v Essex County Council 1986 refers to available route (see appendix 6).
- (4) Step-off – see definitions, page 7.
- (5) Footway or roadside strip – see definitions, page 6.

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Route Assessment Procedure

If there is a need to cross roads there must also be:

- sufficient gaps in the traffic flow and sight lines to allow enough opportunities to cross safely. The gap time analysis should be used where necessary (see page 10)

or

- Crossing facilities eg, zebra, pelican, puffin crossing etc
- Pedestrian phase at traffic lights
- School Crossing Patrol
- pedestrians refuges

If a road needs to be crossed the visibility at the location should allow a vehicle to stop, given the 85thile speed (the speed at which 85% of the vehicles travel below) of the traffic flow. Vehicle stopping distances should be taken as those given in the Highway Code.

In many rural areas, the exercise of continuous judgement is likely to be required. No criteria can provide all the guidance or answers to every situation that may be encountered.

If there is an adequate footway throughout the whole length of the journey, and there is no need to cross the road, then the route is “safe”. (Informed judgement by the professional may be necessary depending on traffic flows and the nature of the route).

If roads have to be crossed to use a footway or to improve sight lines then it may be necessary to give advice about safe crossing places.

On some country roads the footway may not be continuous. Informed judgement will have to be made about the availability of “step off” points.

Section 2

Route Assessment Procedure

Non-hazardous Route Definition

For a route to be classed as non-hazardous there needs to be:-

Both

A

A continuous adequate footway on roads which carry normal to heavy traffic

or

“Step offs” on roads which have light traffic flow but adequate sight lines to provide sufficient advance warning

to drivers and pedestrians.

or

on roads with very light traffic flow, no “step offs”, but sufficiently good sight lines to provide adequate advance warning.

And

B

If there is a need to cross roads there must be:-

Sufficient gaps in the traffic flow and sight lines to allow enough opportunities to cross safely.

or

Crossing facilities (eg zebra, pelican crossings)

Pedestrian phase at traffic lights (including necessary refuges)

School Crossing Patrol

Pedestrian refuges

Road Crossing Assessments

The difficulty of crossing at a site can be assessed by considering the number of gaps in the traffic flow that are acceptable to pedestrians. Free flowing traffic may provide gaps randomly and fairly frequently but speeds tend to be higher and gaps would need to be longer in order to cross the road safely.

An acceptable gap to cross from kerb to kerb varies with each person. Most people will be able to cross two lanes of normal urban traffic in 4 to 6 seconds. Others may need larger gaps of around 10 to 12 seconds.

Gap Time

The survey should record the number of gaps in each 5 minute period that are longer than the road crossing time, using 3 feet per second as the walking speed. Four gaps in each 5 minute period indicate a road that can be crossed without too much delay. Longer gaps could be classified as multiple gaps rather than as just one gap. Transport Note 1/95 (Department for Transport) gives further information on assessing gaps in traffic flow for road crossings.

Section 2

Route Assessment Procedure

Site Surveys

Site surveys should usually take place during the period before schools starts in the morning as this is when traffic flow is generally heaviest, unless it can be shown that the afternoon flow is heavier. Further surveys should take place at the end of the school day and again at whichever period has the heaviest traffic flow, giving a minimum of three surveys. Data should be recorded in 5 minute consecutive periods.

Where there is an obstacle such as a narrow bridge along the route, professional judgement will have to be used to assess the relative risk of passing it. The gap criteria given above may be useful and assist in this type of situation.

Traffic Counts

The traffic flow can vary from very low on some country roads to very heavy in urban areas. It will also vary on individual stretches of road depending on the time of day and in some cases time of year and day of the week.

Suggested flow levels:

Low traffic flow – up to 400 vehicles per hour

Medium traffic flow – 400 to 840 vehicles per hour

Heavy traffic flow – over 840 vehicles per hour

It is difficult to define a figure for ‘light’ and ‘very light’ traffic flows as its suitability for these assessments depends on the road environment, ‘platooning’ of traffic and the gaps between ‘platoons’. The assessor should use their professional judgement.

It is recommended that traffic counts are recorded as “passenger car” equivalent values (PCUs), by using the following factors:

Passenger Car Units

3 pedal cycles	= 1 PCU
2 motorcycles	= 1 PCU
1 Car	= 1 PCU
1 light goods vehicle (up to 3.5 tonnes gross weight)	= 1 PCU
1 Bus/Coach (over 3.5 tonnes)	= 2 PCUs
Goods Vehicles (over 3.5 tonnes)	= 2 PCUs
Goods Vehicles (over 7.5 tonnes/multi axle lorries)	= 3 PCUs

All vehicle counts are two way except on one way systems. Dual carriageways are counted as one way on each side.

Where the two way (one way of a dual carriageway) traffic flow is below 240 vehicles per hour the road is assessed as safe to cross. This is based on the original County Road Safety Officers Association criteria and is equivalent to 1 vehicle every 15 seconds and allows a reasonable gap time to cross a 7m wide road at a walking speed of 3ft per second.

Section 3

Appendix 1

Education and Inspections Act 2006

Part 6 School travel and school food

Travel to schools etc

After section 508 of EA 1996 insert—

“508A LEAs in England: duty to promote sustainable modes of travel etc

(1) A local education authority in England must—

(a) prepare for each academic year a document containing their strategy to promote the use of sustainable modes of travel to meet the school travel needs of their area (“a sustainable modes of travel strategy”),

(b) publish the strategy in such manner and by such time as may be prescribed, and

(c) promote the use of sustainable modes of travel to meet the school travel needs of their area.

(2) Before preparing a sustainable modes of travel strategy, an authority must in particular—

(a) assess the school travel needs of their area, and

(b) assess the facilities and services for sustainable modes of travel to, from and within their area.

(3) “Sustainable modes of travel” are modes of travel which the authority consider may improve either or both of the following—

(a) the physical well-being of those who use them;

(b) the environmental well-being of the whole or a part of their area.

(4) The “school travel needs” of a local education authority’s area are—

(a) the needs of children and persons of sixth form age in the authority’s area as regards travel mentioned in subsection (5), and

(b) the needs of other children and persons of sixth form age as regards travel mentioned in subsection (6).

(5) The needs of children and persons of sixth form age in the authority’s area as regards travel referred to in subsection (4)(a) are their needs as regards travel to and from—

(a) schools at which they receive or are to receive education or training,

(b) institutions within the further education sector at which they receive or are to receive education or training, or

(c) any other places where they receive or are to receive education by virtue of arrangements made in pursuance of section 19(1).

(6) The needs of other children and persons of sixth form age as regards travel referred to in subsection (4)(b) are their needs as regards travel to and from—

(a) schools at which they receive or are to receive education or training,

(b) institutions within the further education sector at which they receive or are to receive education or training, or

(c) any other places where they receive or are to receive education by virtue of arrangements made in pursuance of section 19(1), in so far as that travel relates to travel within the authority’s area.

(7) The Secretary of State must issue, and may from time to time revise, guidance in relation to the discharge by a local education authority of their duties under this section.

(8) Before issuing or revising guidance under subsection (7), the Secretary of State must consult such persons as he considers appropriate.

(9) In discharging their duties under this section an authority must—

(a) consult such persons as they consider appropriate, and

(b) have regard to any guidance given from time to time by the Secretary of State under subsection (7).

(10) References in this section to persons of sixth form age are to be construed in accordance with subsection (1) of section 509AC.

(11) In this section, “academic year” has the same meaning as in section 509AC in the case of local education authorities in England.”

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(1) After section 508A of EA 1996 insert—

“508B LEAs in England: travel arrangements for eligible children

(1) A local education authority in England must make, in the case of an eligible child in the authority’s area to whom subsection (2) applies, such travel arrangements as they consider necessary in order to secure that suitable home to school travel arrangements, for the purpose of facilitating the child’s attendance at the relevant educational establishment in relation to him, are made and provided free of charge in relation to the child.

(2) This subsection applies to an eligible child if—

(a) no travel arrangements relating to travel in either direction between his home and the relevant educational establishment in relation to him, or in both directions, are provided free of charge in relation to him by any person who is not the authority, or

(b) such travel arrangements are provided free of charge in relation to him by any person who is not the authority but those arrangements, taken together with any other such travel arrangements which are so provided, do not provide suitable home to school travel arrangements for the purpose of facilitating his attendance at the relevant educational establishment in relation to him.

(3) “Home to school travel arrangements”, in relation to an eligible child, are travel arrangements relating to travel in both directions between the child’s home and the relevant educational establishment in question in relation to that child.

(4) “Travel arrangements”, in relation to an eligible child, are travel arrangements of any description and include—

(a) arrangements for the provision of transport, and

(b) any of the following arrangements only if they are made with the consent of a parent of the child—

(i) arrangements for the provision of one or more persons to escort the child (whether alone or together with other children) when travelling to or from the relevant educational establishment in relation to the child;

(ii) arrangements for the payment of the whole or any part of a person’s reasonable travelling expenses;

(iii) arrangements for the payment of allowances in respect of the use of particular modes of travel.

(5) “Travel arrangements”, in relation to an eligible child, include travel arrangements of any description made by any parent of the child only if those arrangements are made by the parent voluntarily.

(6) “Travel arrangements”, in relation to an eligible child, do not comprise or include travel arrangements which give rise to additional costs and do not include appropriate protection against those costs.

(7) For the purposes of subsection (6)—

(a) travel arrangements give rise to additional costs only if they give rise to any need to incur expenditure in order for the child to take advantage of anything provided for him in pursuance of the arrangements, and

(b) travel arrangements include appropriate protection against those costs only if they include provision for any expenditure that needs to be incurred for the purpose mentioned in paragraph (a) in the case of the child to be met by the person by whom the arrangements are made.

(8) Travel arrangements are provided free of charge if there is no charge for anything provided in pursuance of the arrangements.

(9) Schedule 35B has effect for the purposes of defining “eligible child” for the purposes of this section.

(10) References to a “relevant educational establishment”, in relation to an eligible child, are references to—

(a) in the case of a child who is an eligible child by virtue of falling within any of paragraphs 2, 4, 6, 9, 11 and 12 of Schedule 35B, the qualifying school (within the meaning of that Schedule) at which the child is a registered pupil referred to in the paragraph in question, and

(b) in the case of a child who is an eligible child by virtue of falling within any of paragraphs 3, 5, 7, 10 and 13 of Schedule 35B, the place other than a school, where the child is receiving education by virtue of arrangements made in pursuance of section 19(1), referred to in the paragraph in question.

(11) Regulations may modify subsections (1) and (2) to provide for their application in cases where there is more than one relevant educational establishment in relation to a child.

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508C LEAs in England: travel arrangements etc for other children

- (1) A local education authority in England may make such school travel arrangements as they consider necessary, in relation to any child in the authority's area to whom this section applies, for the purpose of facilitating the child's attendance at any relevant educational establishment in relation to the child.
- (2) This section applies to a child who is not an eligible child for the purposes of section 508B.
- (3) "School travel arrangements", in relation to such a child, are travel arrangements relating to travel in either direction between his home and any relevant educational establishment in relation to the child, or in both directions.
- (4) "Travel arrangements", in relation to such a child, are travel arrangements of any description and include—
 - (a) arrangements for the provision of transport, and
 - (b) any of the following arrangements only if they are made with the consent of a parent of the child—
 - (i) arrangements for the provision of one or more persons to escort the child (whether alone or together with other children) when travelling to or from any relevant educational establishment in relation to the child;
 - (ii) arrangements for the payment of the whole or any part of a person's reasonable travelling expenses;
 - (iii) arrangements for the payment of allowances in respect of the use of particular modes of travel.
- (5) A local education authority in England may pay, in the case of a child in the authority's area to whom this section applies and in relation to whom no arrangements are made by the authority under subsection (1), the whole or any part, as they think fit, of a person's reasonable travelling expenses in relation to that child's travel in either direction between his home and any relevant educational establishment in relation to the child, or in both directions.
- (6) References to a "relevant educational establishment", in relation to a child to whom this section applies, are references to—
 - (a) any school at which he is a registered pupil,
 - (b) any institution within the further education sector at which he is receiving education, or
 - (c) any place other than a school where he is receiving education by virtue of arrangements made in pursuance of section 19(1).

508D Guidance etc in relation to sections 508B and 508C

- (1) The Secretary of State must issue, and may from time to time revise, guidance in relation to the discharge by a local education authority of their functions under sections 508B and 508C.
- (2) Before issuing or revising guidance under subsection (1), the Secretary of State must consult such persons as he considers appropriate.
- (3) In discharging their functions under sections 508B and 508C an authority must have regard to any guidance given from time to time by the Secretary of State under subsection (1).
- (4) Regulations may require a local education authority to publish, at such times and in such manner as may be prescribed, such information as may be prescribed with respect to the authority's policy and arrangements relating to the discharge of their functions under section 508B or 508C."
- (2) Schedule 8 (which inserts Schedule 35B to EA 1996) has effect.

(1) After section 508D of EA 1996 insert—

"508E LEAs in England: school travel schemes

- (1) Schedule 35C has effect in relation to school travel schemes.
- (2) Where a school travel scheme is in force under Schedule 35C, the local education authority in England by which the scheme is made must give effect to the scheme by—
 - (a) making the arrangements which are set out in the scheme as described in paragraph 2(1) of that Schedule as arrangements to be made by the authority,
 - (b) complying with the requirement of the scheme described in paragraph 2(5) of that Schedule (requirement to

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make suitable alternative arrangements),

(c) complying with the requirement of the scheme described in paragraph 3 of that Schedule (travel arrangements for eligible children), and

(d) complying with the scheme's policy applicable to charging and any other requirements of the scheme.

(3) Where a school travel scheme is in force under Schedule 35C, the local education authority in England by which the scheme is made do not have any functions under section 508B or 508C in relation to children in their area.

(4) The Secretary of State must issue, and may from time to time revise, guidance in relation to the discharge by a local education authority in England of any duty under subsection (2) or of any functions under Schedule 35C.

(5) Before issuing or revising guidance under subsection (4), the Secretary of State must consult such persons as he considers appropriate.

(6) In discharging any duty under subsection (2) and in exercising any functions under Schedule 35C, a local education authority in England must have regard to any guidance given from time to time by the Secretary of State under subsection (4)."

(2) Schedule 9 (which inserts Schedule 35C to EA 1996) has effect.

79 Piloting of school travel scheme provisions

(1) The school travel scheme provisions are to be piloted in accordance with regulations made by the Secretary of State.

(2) Regulations under subsection (1) may, in particular, provide for there to be a limit on the number of school travel schemes which may be in force while the school travel scheme provisions are being piloted.

(3) In this section, "the school travel scheme provisions" means section 508E of, and Schedule 35C to, EA 1996.

80 Power to repeal school travel scheme provisions etc

(1) The Secretary of State must prepare and publish, before 1st January 2012, an evaluation of the operation and effect of school travel schemes approved under Schedule 35C to EA 1996.

(2) The Secretary of State may by order provide for the school travel scheme provisions to cease to have effect in relation to local education authorities with effect from such date as may be specified in the order.

(3) The earliest date which may be specified under subsection (2) is 1st August 2012.

(4) The latest date which may be specified under subsection (2) is 1st August 2015.

(5) Power to make an order under this section includes power to make consequential amendments and repeals in any enactment, including this Act and enactments passed or made after the passing of this Act.

(6) In this section, "the school travel scheme provisions" means section 508E of, and Schedule 35C to, EA 1996.

After section 508E of EA 1996 insert—

"508F LEAs in England: provision of transport etc for certain adult learners

(1) A local education authority in England must make such arrangements for the provision of transport and otherwise as they consider necessary, or as the Secretary of State may direct, for the purpose of facilitating the attendance of qualifying adult learners receiving education or training at an institution outside both the further education and higher education sectors.

(2) "Qualifying adult learners" means adult learners for whom the Learning and Skills Council for England has secured—

(a) the provision of education or training at the institution in question, and

(b) the provision of boarding accommodation under section 13 of the Learning and Skills Act 2000 (persons with learning difficulties).

(3) Any transport provided in pursuance of arrangements under subsection (1) must be provided free of charge.

(4) A local education authority in England may pay the whole or any part, as they think fit, of the reasonable travelling expenses of any adult learner receiving education or training at an institution outside both the further education and higher education sectors for whose transport no arrangements are made under subsection (1).

(5) In considering whether or not they are required by subsection (1) to make arrangements in relation to a

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particular person, a local education authority must have regard, amongst other things, to the age of the person and the nature of the routes which he could reasonably be expected to take.

(6) Arrangements made by a local education authority under subsection (1) must make provision for persons receiving full-time education or training at institutions mentioned in subsection (1) which is no less favourable than the provision made in pursuance of the arrangements for persons of the same age with learning difficulties (within the meaning of section 13 of the Learning and Skills Act 2000) for whom the authority secure the provision of education at any other institution.

(7) “Adult learner” means a person who is neither a child nor a person of sixth form age.

(8) The reference in subsection (7) to a person of sixth form age is to be construed in accordance with subsection (1) of section 509AC.”

82 Amendments of section 444 of EA 1996 in relation to school travel

(1) Section 444 of EA 1996 (offence of failing to secure regular attendance at school of registered pupil) is amended as follows.

(2) After subsection (3) insert—

“(3A) Subsections (3B) and (3D) apply where the child’s home is in England.

(3B) The child shall not be taken to have failed to attend regularly at the school if the parent proves that—

(a) the local education authority have a duty to make travel arrangements in relation to the child under section 508B(1) for the purpose of facilitating the child’s attendance at the school and have failed to discharge that duty, or

(b) the local education authority have a duty to make travel arrangements in relation to the child by virtue of subsection (2)(c) of section 508E (school travel schemes) for the purpose of facilitating the child’s attendance at the school and have failed to discharge that duty.

(3C) For the purposes of subsection (3B)—

(a) the reference to “travel arrangements” in paragraph (a) has the same meaning as in section 508B, and

(b) the reference to “travel arrangements” in paragraph (b) has the same meaning as in paragraph 3 of Schedule 35C.

(3D) Where the school is an independent school which is not a qualifying school, the child shall not be taken to have failed to attend regularly at the school if the parent proves—

(a) that the school is not within walking distance of the child’s home,

(b) that no suitable arrangements have been made by the local education authority for boarding accommodation for him at or near the school, and

(c) that no suitable arrangements have been made by the local education authority for enabling him to become a registered pupil at a qualifying school nearer to his home.

(3E) For the purposes of subsection (3D), “qualifying school” has the same meaning as it has for the purposes of Schedule 35B (meaning of “eligible child” for the purposes of section 508B).

(3F) Subsection (4) applies where the child’s home is in Wales.”

(3) In subsection (5) for “subsection (4)” substitute “subsections (3D) and (4)”.

(4) In subsection (6) for “subsection (4)” substitute “subsections (3B), (3D) and (4)”.

(5) The amendments made by this section do not apply in relation to any failure of a child to attend at a school or other place in relation to which section 444 of EA 1996 applies which occurs on a day before this section comes into force.

(1) In section 509AA of EA 1996 (provision of transport etc for persons of sixth form age)—

(a) in subsection (9)—

(i) for “Secretary of State” substitute “appropriate authority”, and

(ii) for “he” substitute “it”,

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(b) after subsection (9) insert—

“(9A) The “appropriate authority” means—

(a) in the case of a local education authority in England, the Secretary of State, and

(b) in the case of a local education authority in Wales, the National Assembly for Wales.”, and

(c) in subsection (10), after “Secretary of State” insert “(in relation to local education authorities in England) or the National Assembly for Wales (in relation to local education authorities in Wales)”.

(2) In section 509AB of EA 1996 (further provision about transport policy statements)—

(a) in subsection (5), for the words from “by the Secretary” to the end substitute “under this section—

(a) by the Learning and Skills Council for England (in the case of an authority in England), or

(b) by the National Assembly for Wales (in the case of an authority in Wales).”,

(b) in subsection (6)(d), for the words from “by the Secretary” to the end substitute “for the purposes of this section by the Learning and Skills Council for England (in the case of an authority in England) or the National Assembly for Wales (in the case of an authority in Wales).”, and

(c) after subsection (7) insert—

“(8) Any guidance issued by the Learning and Skills Council for England under this section must be published in such manner as the Council thinks fit.”

(3) In section 509AC of EA 1996 (interpretation of sections 509AA and 509AB)—

(a) in subsection (6), after “subsection (5)” insert “in relation to its application in the case of local education authorities in England”, and

(b) after subsection (6) insert—

“(7) The National Assembly for Wales may by order amend the definition of “academic year” in subsection (5) in relation to its application in the case of local education authorities in Wales.”

(4) In section 18 of the Learning and Skills Act 2000 (c. 21) (supplementary functions of Learning and Skills Council for England), after subsection (5) insert—

“(6) The Secretary of State may by order confer or impose on the Council such powers or duties falling within subsection (7) as he thinks fit.

(7) A power or duty falls within this subsection if it is exercisable in connection with—

(a) the Secretary of State’s function under section 509AA(9) of the Education Act 1996 (power to direct LEA to make arrangements additional to those specified in transport policy statement), or

(b) any function of the Secretary of State under any of sections 496 to 497B of the Education Act 1996 as regards anything done, proposed to be done or omitted to be done by a local education authority in England under section 509AA or 509AB of that Act.”

After section 509AC of EA 1996 insert—

“509AD LEAs in England: duty to have regard to religion or belief in exercise of travel functions

(1) A local education authority in England must have regard, amongst other things, in exercising any of their travel functions in relation to or in connection with the travel of a person or persons to or from a school, institution or other place, to any wish of a parent of such a person for him to be provided with education or training at a particular school, institution or other place where that wish is based on the parent’s religion or belief.

(2) The “travel functions” of a local education authority in England are their functions under any of the following provisions—

- section 508A (duty to promote sustainable modes of travel etc);
- section 508B (travel arrangements for eligible children);
- section 508C (travel arrangements etc for other children);
- section 508E and Schedule 35C (school travel schemes);
- section 508F (transport etc for certain adult learners);
- section 509AA (transport etc for persons of sixth form age).

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(3) For the purposes of this section —

(a) “religion” means any religion,

(b) “belief” means any religious or philosophical belief,

(c) a reference to religion includes a reference to lack of religion, and

(d) a reference to belief includes a reference to lack of belief.”

85 Further amendments relating to travel to schools etc

Schedule 10 contains further amendments relating to travel to schools and other places where education or training is received.

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Appendix 2

EDUCATION ACT 1996 Section 509

Provision of Transport etc:

(1) A local education authority shall make such arrangements for the provision of transport and otherwise as they consider necessary, or as the Secretary of State may direct, for the purpose of facilitating the attendance of persons receiving education:-

- (a) at schools;
- (b) at any institution maintained or assisted by the authority which provides further education or higher education (or both);
- (c) at any institution within the further education sector; or
- (d) at any institution outside both the further education sector and the higher education sectors, where a further education funding council has secured provision for those persons at the institution under section 4(3) or (5) of the Further and Higher Education Act 1992.

(2) Any transport provided in pursuance of arrangements under subsection (1) shall be provided free of charge.

(3) A local education authority may pay the whole or any part, as they see fit, of the reasonable travelling expenses of any person receiving education:-

- (a) at a school, or
- (b) at any such institution as is mentioned in subsection (1), for whose transport no arrangements are made under that subsection.

(4) In considering whether or not they are required by subsection (1) to make arrangements in relation to a particular person, a local education authority shall have regard (amongst other things):-

- (a) to the age of the person and the nature of the route, or alternative routes, which he could reasonably be expected to take; and
- (b) to any wish of his parent for him to be provided with education at a school or institution in which the religious education provided is that of the religion or denomination to which his parent adheres.

(5) Arrangements made by a local education authority under subsection (1) shall:-

- (a) make provision for pupils at grant-maintained schools which is no less favourable than the provision made in pursuance of the arrangements for pupils at schools maintained by a local education authority;
- (b) make provision for persons receiving full-time education at any institution within the further education sector which is no less favourable than the provision made in pursuance of the arrangements for pupils of the same age at schools maintained by a local education authority; and
- (c) make provision for persons receiving full-time education at institutions mentioned in subsection (1)(d) which is no less favourable than:-

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(i) the provision made in pursuance of the arrangements for persons of the same age with learning difficulties (within the meaning of section 15(5) at schools maintained by a local education authority, or

(ii) where there are no such arrangements, the provision made in pursuance of such arrangements for such persons for whom the authority secures the provision of education at any other institution.

(6) Regulations under section 414(6) may require publication (within the meaning of that section) by every local education authority of such information as may be required by the regulations with respect to the authority's policy and arrangements for provision under this section for persons attending institutions mentioned in subsection (1) (c) or (d) who are over compulsory school age and who have not attained the age of 19.

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EDUCATION ACT 1996 Section 444

Offence: failure to secure regular attendance at school of registered pupil.

(1) If a child of compulsory school age who is a registered pupil at a school fails to attend regularly at the school, his parent is guilty of an offence.

(2) Subsections (3) to (6) below apply in proceedings for an offence under this section in respect of a child who is not a boarder at the school in which he is a registered pupil.

(3) The child shall not be taken to have failed to attend regularly at the school if he is...

- (a) with leave,
- (b) at any time when he was prevented from attending by reason of sickness or any unavoidable cause, or
- (c) on any day exclusively set apart for religious observance by the religious body to which his parent belongs.

(4) The child shall not be taken to have failed to attend regularly at the school if the parent proves:-

- (a) that the school at which the child is a registered pupil is not within walking distance of the child's home, and
- (b) that no suitable arrangements have been made by the local education authority or the funding authority for any of the following:-

- (i) his transport to and from the school
- (ii) boarding accommodation for him at or near the school, or
- (ii) enabling him to become a registered pupil at a school nearer to his home.

(5) In subsection (4) 'walking distance':-

- (a) in relation to a child who is under the age of eight, means 3.218688 kilometres (two miles), and
- (b) in relation to a child who has attained the age of eight, means 4.828032 kilometres (three miles),

in each case measured by the nearest available route.

(6) If it is proved that the child has no fixed abode, subsection (4) shall not apply, but the parent shall be acquitted if he proves:-

- (a) that he is engaged in a trade or business of such a nature as to require him to travel from place to place,
- (b) that the child has attended at a school as a registered pupil as regularly as the nature of that trade or business permits, and
- (c) if the child has attained the age of six, that he has made at least 200 attendances during the period of 12 months ending with the date on which the proceedings were instituted.

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(7) In proceedings for an offence under this section in respect of a child who is a boarder at the school at which he is a registered pupil, the child shall be taken to have failed to attend regularly at the school if he is absent from it without leave during any part of the school term at a time when he was not prevented from being present by reason of sickness or any unavoidable cause.

(8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) In this section 'leave', in relation to a school, means leave granted by any person authorised to do so by the governing body or proprietor of the school.

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The Weekly Law Reports – Shaxted v. Ward Feb. 1954

SHAXTED v. WARD

[QUEEN'S BENCH DIVISION (Lord Goddard, C.J. Byrne and Parker, J.J.), January 25 1954.]

Education – School attendance – Duty of parent to secure regular attendance of pupil – ‘available route’ – Road unsafe for unescorted children – Dangerous crossing – Education Act, 1944 (S31), S39(5).

By the Education Act, 1944 S39(2)(c), a child shall not be deemed to have failed to attend regularly at school if the school at which the child is a registered pupil is not within ‘walking distance’ of the child’s home. By S39(5) walking distance means, according to the age of the child, two or three miles measured by ‘the nearest available route’.

The appellant, the father of the child, aged six years, who failed to attend school regularly, being charged with an offence under S39(1) of the Act (which provides that, if a child of compulsory school age fails regularly to attend school, the parent of the child shall be guilty of an offence), contended that, although the direct route from the child’s home to the school was within the distance laid down in S39(5) part of the road was unsafe for unescorted children as it included a dangerous crossing, and, therefore, was not an ‘available route’; that the nearest available safe route was more than the distance laid down in S39(5); and therefore, there was a reasonable excuse for non-attendance.

Held: Distance, not safety, was the test for determining ‘the nearest available route’, and, therefore, the school was within walking distance of the child’s home, and the appellant was guilty of an offence.

FOR THE EDUCATION ACT, 1944, S39, SEE HALSBURY’S STATUTES Second Edition, Vol. 8, p.183.

Cases referred to:

(1)Hares v. Curtin, [1913] 2 K.B. 328; 82 L.J.K.B. 707; 108 L.T. 974;

76 J.P. 313; 19 Digest 568, 89.

Cases Stated by Kent Justices.

At a court of summary jurisdiction, sitting at Canterbury on Aug. 13, 1953, the respondent, Francis George Ward, an education welfare officer, preferred informations against each of the appellants, Bertie Herbert Harold Shaxted and Albert George Farrier, charging that each, being the parent of a child of compulsory school age, was guilty of an offence against S39(1) of the Education Act, 1944, in that the child, who was a registered pupil at Preston County Primary School, failed to attend regularly thereat between April 21 and June 26, 1953.

It was proved or admitted that each of the appellants was the parent of a child of compulsory school age who was a registered pupil at the said school and failed to attend that school during the period mentioned in the information: that each child lived in the hamlet of West Stourmouth and within the distance from the school laid down in S39(5) of the Act as ‘walking distance’ in relation to each such child respectively by the direct route; that this route was safe for the children to use if escorted, the bit of road near the school where, owing to the presence

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of a dangerous crossing, an escort would be desirable for small children being common to both the children in question; that it was usual, and the duty of parents, to provide escort for their children to and from school, when necessary; that the education authority, nevertheless, arranged for an omnibus taking the children from Stourmouth to and from a secondary school at Sandwich to take the children of the appellants to and from school during the period in question; that on the return journey the omnibus reached the school at 4.45 p.m. to pick up these children there, they having finished their lessons at 3.45 p.m. ; that the appellants wanted a special omnibus from the school and would not provide an escort for their children; that another Stourmouth resident, a Mr S., who was a co-defendant with the appellants and gave evidence, admitted that his son could have attended the school regularly, but he 'had to stand by the other parents'.

On behalf of the appellants it was contended: (i) that the direct routes were not safe for their children to use when returning from school in a party; (ii) that the afternoon bus from school was not suitable transport for the return journey and, (iii) that, therefore, they were prevented by unavoidable cause within the meaning of S39(2)(a) of the Education Act, 1944, from sending their children to school; (iv) that the words 'in relation to a child' of the ages specified in S39(5) referred not merely to the words 'walking distance', but that those words also governed the later words 'nearest available route', limiting those words to such routes only as were safe for a child to use, that the direct routes were not safe for the children and the nearest available safe route was more than the distances specified in the section, and so the children were entitled to transport, but no suitable arrangements had been made for their transport to school. On behalf of the respondent it was contended that 'available route' meant a route which could be followed without committing trespass.

The justices were of the opinion that no defence had been made out because (i) the direct routes were safe for children when escorted; (ii) there was no unavoidable cause, because the direct routes were safe if the parents had escorted their children or arranged for their escort, and also the omnibus provided was suitable in the circumstances; (iii) the suggested interpretation of the words 'available route' was irrelevant because the justices held (a) that the direct routes were, in fact, safe for the children in question, and (b) that the omnibus provided from school was a 'suitable arrangement' for the transport of the said children; (iv) and, further, the suggested interpretation of the words 'available route' was strained and unnatural. The justices held that the school was within walking distance of the home of each appellant so that the appellants were not entitled to transport for their children, and they convicted the appellants. The second appellant withdrew his appeal.

Van Oss for the appellant, Shaxted.

Thesiger, Q.C., and Jupp for the respondent.

LORD GODDARD, C.J., stated the facts and continued: The question is whether or not the school is within walking distance of the child's home. By the Education Act, 1944 S39(1), a parent is guilty of an offence if his child fails to attend regularly at the school where he is a registered pupil, but by S39(2): "...the child shall not be deemed to have failed to attend regularly at school (c) if the parent proves that the school at which the child is a registered pupil is not within walking distance of the child's home, and that no suitable arrangements have been made by the local education authority either for his transport to and from the school or for boarding accommodation..."

We need not deal with suitable accommodation if the school is within walking distance, which by S39(5)

"...means in relation to a child who has not attained the age of eight years two miles, and in the case of any other child three miles, measured by the nearest available route."

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What the justices had to decide was whether or not the school was within walking distance, and it is said that the route which the child took, and which is under two miles, is not the nearest available route because part of it is said to be dangerous for children to walk alone unescorted. I cannot read the word 'available' as meaning necessarily safe, because we can see how that word got into the Act. By the Elementary Education Act, 1870, S74(3), it was a reasonable excuse:

"That there is no public elementary school open which the child can attend within such distance, not exceeding three miles, measured according to the nearest road from the residence of such child, as the by-laws may prescribe."

The Education Act, 1921, S49(b) provided an identical "reasonable excuse". Before the Act of 1921, in *Hares v. Curtin* (1), in which it was suggested that a cart track could not be a road and that the walking distance had not been measured according to, "the nearest road".

LORD ALVERSTONE, C.J., giving judgement, said (1913 2 K.B. 331):

"It does not mean a road of any particular class, but simply a route from the residence of the child to the nearest school".

In the Act of 1944 the words used in S39(5) are "two miles... measured by the nearest available route". I do not think that they were meant to make any change in the law, except that a number of somewhat unnecessary words were cut out and there was substituted in the expression which has been used in this court in *Hares v. Curtin* (1).

To some extent I sympathise with the views of the appellant in the present case. It may be that the parents would like to bring pressure on the Kent County Council to have someone to see that this 'bit of road', as the justices call it, is safe for the children to cross - someone, for example, as is seen in London, wearing a white smock and holding a board with the words "Children Crossing, Stop". That, however, is a matter for the education authority to consider and put into operation if it thinks fit. I can only say, speaking for myself, that a route along which a child can walk and which measures not more than two miles is "the nearest available route". It may sometimes be unsafe. Sometimes the route might be flooded and the child could not walk along it, that might be a reasonable excuse for not using it on that particular day. We are not dealing with that sort of question. We are dealing with the question where the parents think it is not safe. Parliament has not substituted safety for distance as the test. Any question with regard to safety must, and I have no doubt, will, be taken into consideration by the education authority. I think in this case the justices came to a right decision and the appeal fails.

BYRNE, J.:

I agree. Counsel for the appellant contended that the meaning of the word 'available' in the Education Act, 1944 S39(5), is that there is no sound reason why that route should not be used by children. I am bound to say that I cannot read that meaning into that word. The 'nearest available route' means the method by which the two miles are measured from the child's house to the school in order to ascertain whether or not it is a walking distance."

PARKER, J.:

I agree.

Solicitors: Jaques & Co., agents for Girling, Wilson & Bailey, Margate (for the appellant); Sharpe, Pritchard & Co., agents for Gerald Birship, Maidstone (for the respondent).

[Reported by F. GUTTMAN, ESQ., Barrister-at-Law.

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Appendix 5

The Weekly Law Reports – Farrier v Ward Feb. 12, 1954

[QUEEN’S BENCH DIVISION]

* FARRIER v. WARD

1954 Jan. 25 – Lord Goddard C.J. Byrne and Parker JJ.

Education – School – Attendance – ‘Walking Distance’ – Direct route nor safe for children unless escorted – Meaning of ‘nearest available route’ – Question of safety – Education Act, 1944 (7 & 8 Geo. 6, c.31), s.39(5).

Section 39(2) of the Education Act, 1944, provides that a child under eight years of age shall not be deemed to have failed to attend school regularly if his parent proves that the school is not within walking distance of the child’s home. By subsection (5): the expression ‘walking distance’ means, in relation to a child who has not attained the age of eight years two miles, measured ‘by the nearest available route’.

The words ‘nearest available route’ in section 39(5) of the Act refer only to measurement of the distance between the child’s home and the school; if a route fulfils the requirements of that section as to distance, the fact that it may be unsafe is not material.

CASE STATED by Kent justices sitting at Canterbury.

On July 13, 1953, informations were preferred by Francis George Ward, the County Education Welfare officer, against Bertie Herbert Harold Shaxted and Albert George Farrier, charging that each, being the parent of a child of compulsory school age, was guilty of an offence in that the child was guilty of an offence in that the child who was a registered pupil at Preston County Primary School failed to attend regularly thereat between April 21 and August 26, contrary to section 39(1) of the Education Act, 1944.

At the hearing of the informations the following facts were proved or admitted. Each defendant was the parent of a child of compulsory school age who was under eight years of age and a registered pupil at the Preston school and who failed to attend during the material period. Each child lived in the hamlet of West Stourmouth and the route from his home to the school was under two miles. These routes were safe for the children to use, if escorted. Both children had to travel by a bit of road near the school where an escort would be desirable for small children. It was usual and the duty of parents to provide escort for their children but nevertheless the education authority arranged for an omnibus which took the children from Stourmouth to and from Preston School during the period in question. On the return journey the bus reached Preston School at 4.45 p.m. to collect the children, the children at that school having finished their lessons at 3.45 p.m. The defendants wanted a special omnibus from school and would not provide any escort for their children.

It was contended for the defendants (a) that the direct routes were not safe for their children to use when returning from work in a party; (b) that the afternoon bus provided by the education authority was not suitable transport for the return journey; and (c) that for those reasons they were prevented by unavoidable cause within the meaning of Section 39(2)(c) of the Act from sending their children to school. They also contend that the words “in relation to a child” in Section 39(5) referred not merely to the words ‘walking distance’ appropriate to the respective ages specified in the subsection but to the later words ‘nearest available route’, limiting them to such

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routes only as were safe for a child of the ages specified to use and that the nearest available safe route was more than the distance specified in the section.

The prosecutor contended that 'available route' meant a route which could be followed without committing trespass.

The justices were of the opinion that the direct routes were safe for children when escorted; that there was no unavoidable cause within the meaning of section 39(2)(c) because the direct routes were safe if the children had escorted the children or arranged for their escort; and that in the circumstances the bus provided was suitable. They considered, therefore, that the suggested interpretation of the words 'available route' was irrelevant, but that if it were relevant the defendants' interpretation of the words 'available route' would be strained and unnatural. Accordingly, they held that the Preston school was within 'walking distance' of the home of both appellants, who were not entitled to transport for their children. The justices convicted the defendants.

The defendant Farrier appealed.

M.D. Van Oss for the appellant

Gerald A. Thesiger Q.C. and K. Jupp for the prosecutor.

Hares v. Curtin was cited in argument [1913] 2 K.B. 328.

LORD GODDARD C.J.

The short point that arises is this: The justices found that the route which these children had to travel was 'safe for these children to use if escorted. The bit of road near the school where an escort would be desirable for small children was common to both the children in question.' I think that the justices recognized that it would be desirable for children to be escorted or in some way conducted along or across a certain piece of road where there was probably a good deal of traffic. They found that it was usual for parents to provide escort for their children to and from school, when necessary.

The real question is whether the school is within walking distance of the children's home because section 39 of the Education Act, 1944, provides that it is a reasonable excuse for the parent to prove 'that the school at which the child is a registered pupil is not within walking distance of the child's home, and that no suitable arrangements have been made by the local education authority either for this transport to and from the school or for boarding. By section 39(5); 'walking distance' means in relation to a child who has not attained the age of 8 years two miles, measured by the nearest available route. The justices have to find whether the school is within walking distance; and it is said that the route which the children took, which was under two miles, was not the 'nearest available route' because part of it was said to be dangerous for children to walk along unescorted. I cannot read the word 'available' as meaning necessarily safe, because we can see how these words came to be included in the Act.

By section 74 of the Elementary Education Act, 1870, the excuse was if 'there is no public elementary school open which the child can attend within such distance, not exceeding three miles, measured according to the nearest road from the residence of such child, as the by-laws may prescribe'. In section 49(6) of the Education Act, 1921, the reason was 'that there is no public elementary school open which the child can attend within such distance, not exceeding three miles, measured according to the nearest road from the residence of the child, as the by-laws may prescribe'. There is no difference in the words in those Acts.

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Appendix 5

Before the Act of 1921, it was suggested in *Hares v. Curtin* which was decided in 1913, that a cart track could not be the nearest road because the walking distance had not been measured according to the nearest road; and Lord Alverstone, giving judgement, said “It does not mean a road of any particular class, but simply a route from the residence of a child to the nearest school.”

In the Education Act, 1944, the words used are “two miles measured by the nearest available route.” I do not think that it was meant to make any change in the law at all, except that it omits a number of somewhat unnecessary words and substitutes the expression which was used in the court in *Hares v. Curtin*.

To some extent I sympathize with the views of the parents in this case, and it may be that they would like to bring pressure upon the Kent County Council to have a person on the road to see that ‘this bit of the road’, as the justices call it, is safe for the children to cross. Those, however, are matters for the education authority to consider and to put into operation if they think fit. I can only say that, if there is a road which measures not more than two miles or a route along which a child can walk and its measurement does not exceed two miles, that is the nearest available route. It may sometimes be unsafe; sometimes the route might be flooded, and, if that happened and the person could not walk along the road, that might be a reasonable excuse for not using it on that particular day, but we are not concerned with that but with a case where the parents think the route is not safe. Parliament has not substituted safety as a test but the distance. Any question with regard to safety must be, and I have no doubt will be, taken into consideration by the education authority. In my opinion, therefore, the justices came to a right decision and the appeal fails.

BYRNE J.

I agree. Mr Van Oss contends that the meaning of the word ‘available’ is that there is no sound reason why that route should not be used by children. I am bound to say that I cannot read that meaning into the word but, as it appears in the Act of 1944, all that is meant by the ‘nearest available route’ is the method by which the two miles are to be measured from the child’s house to the school in order to ascertain whether it is a walking distance.

PARKER J.

I agree with both judgements which have been delivered.

Appeal dismissed.

Solicitors: Jaques & Co. for Girling, Wilson & Bailey, Margate; Sharpe, Prichard & Co. for Gerald Bishop, Maidstone.

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Appendix 6

House of Lords Judgement 16.10.86

All England Law Reports

7 November 1986

Rogers and another v Essex County Council

HOUSE OF LORDS

LORD BRIDGE OF HARWICH, LORD BRANDON OF OAKBROOK, LORD MACKAY OF CLASHFERN, LORD ACKNER AND LORD OLIVER OF AYLWERTON

28 July, 16 October 1986

Education – School attendance – Duty of parent to secure regular attendance of pupil – Failure to secure regular attendance – Proceedings against parent – Defence – Distance of home from school – Nearest available route – Shortest route dangerous to unaccompanied child – Whether route “available” – Education Act 1944 S39 (2)(c)(5).

The distance of the shortest public route between a house where a 12 year old child lived and the school where she was registered was 2.94 miles. Part of that route consisted of an isolated, unmade and unlit track which, particularly in winter, would be both difficult and dangerous for a young girl to cross on her own. The child failed to attend school regularly and her parents were convicted of failing to ensure her regular attendance, contrary to S39(2)(c) of the Education Act 1944. The parents appealed, relying on S39(2)(c) of the Act which provided that it was a good defence to show that the school was not within walking distance of the child’s home and the local authority had not provided transport or alternative schooling arrangements. In the case of a child over eight years old, “walking distance” was defined by S39(5) as “three miles, measured by the nearest available route.” The Crown Court dismissed the appeal but the parent’s appeal to the Divisional Court was upheld on the grounds that the nearest available route was that route which the child could safely use unaccompanied. The local authority appealed to the House of Lords, contending that the nearest available route usable without trespassing.

Held:

For the purpose of deciding under S39 of the 1944 Act whether a school was within walking distance of a child’s home, the nearest route between the child’s home and his or her school was the nearest route along which the child could walk to school with reasonable safety when accompanied by an adult and a route did not fail to qualify as the nearest available route because of dangers which would arise if the child was unaccompanied. The local authority’s appeal would therefore be allowed.

Notes:

For the duty of parents to secure attendance of pupils and for statutory defences to proceedings against parent s for non-attendance of registered pupils see 15 Halsbury’s Laws (4th Edition) Paras32-33, and for cases on the subject see 19 Digest (Reissue) 499, 503, 3885, 3902.

Case referred to in options

Shaxted v Ward (1954) Farrier v Ward (1954)

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Appendix 6

Appeal:

Essex County Council appealed, with leave of the Divisional Court of the Queen's Division given on 10 May 1985, against the decision of that court (Parker LJ and Tudor Evans J) on 19 February 1985 allowing an appeal by the respondents, Peter Albert Rogers and Violet Rogers (the parents), by way of case stated against a decision of the Crown Court at Chelmsford (His Honour Judge Ward and justices) on 13 July 1984 dismissing the parents appeal from their conviction by the justices for the county of Essex acting in and for the petty sessional division of Colchester on 23 May 1984 for an offence under SS39 and 40(i) of the Education Act 1944 by reason of the failure of the parents daughter to attend regularly at the Stanway Comprehensive School where she was a registered pupil. The Divisional Court certified that a point of law of general public importance was involved in its decision.

The facts are set out in the opinion of Lord Ackner.

Conrad Dehn QC and David Mellor for the local authority.

Gavin Lightman QC and Edward Irving for the parents.

Their Lordships took time for consideration.

16 October. The following opinions were delivered.

LORD BRIDGE OF HARWICH.

My Lords, for the reasons given in the speech of my noble and learned friend Lord Ackner, with which I agree, I would allow the appeal and answer the certified question in the negative.

LORD BRANDON OF OAKBROOK.

My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Ackner. I agree with it and for the reasons which he gives I would allow the appeal and make no order as to costs.

LORD MACKAY OF CLASHFERN.

My Lords. I have had the opportunity of reading in draft the speech prepared by Lord Ackner. I agree with it and concur in the order which he proposes.

LORD ACKNER.

My Lords, the short question raised by this appeal is: who is to pay for the transport to the Stanway comprehensive school of Shirley Rogers, a schoolgirl aged 12 at the material time? Should it be the appellants, the Essex County Council, which is the local education authority or the respondents, Shirley's parents? The local authority have offered Shirley the use of the school bus but subject to payment of the concessionary fare of £20 a term, the parents not qualifying for free transport on a means test basis. The parents, in principle, have refused to make any payment for school transport. The answer to the question is provided by the Education Act 1944 of which only a few sections need to be referred to.

Education Act 1944 Section 36 imposes on parents the duty to secure the education of their children. It provides:

"It shall be the duty of the parent of every child of compulsory school age to cause him to receive efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have, either by regular attendance at school or otherwise."

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Section 39 imposes the duty on parents to secure regular attendance of registered pupils. Shirley was registered at the Stanway School. This section provides:

- (1) If any child of compulsory school age who is a registered pupil at a school fails to attend regularly thereat, the parent of the child shall be guilty of an offence against this section.
- (2) In any proceedings for an offence against this section in respect of a child who is not a boarder at the school at which he is not a registered pupil, the child shall not be deemed to have failed to attend regularly at the school be reason of his absence therefrom with leave or – (a) at any time when he was prevented from attending by reason of sickness or any unavoidable cause: (b) on any day exclusively set apart for religious observance by the religious body to which his parent belongs: (c) if the parent proves that the school at which the child is a registered pupil is not within walking distance of the child's home and that no suitable arrangements have been made by the local education authority either for his transport to and from the school or for boarding accommodation for him at or near the school or for enabling him to become a registered pupil at a school nearer to his home...
- (5) In this section the expression... "walking distance" means, in relation to a child who has not attained the age of eight years two miles and in the case of any other child three miles, measured by the nearest available route".

Section 55 relates to the provision of transport and other facilities. As amended, it provides:

- (1) A local education authority shall make such arrangements for the provision of transport and otherwise as they consider necessary for as the Secretary of State may direct for the purpose of facilitating the attendance of pupils at schools or country colleges or at any course or class provided in pursuance of a scheme of further education in force for their area and any transport provided in pursuance of such arrangements shall be provided free of charge.
- (2) A local education authority may pay the whole, or any part, as the authority think fit, of the reasonable travelling expenses of any pupil in attendance at any school or county college or at such course or class as aforesaid for whose transport no arrangements are made under this section.

This appeal is concerned with the "walking distance" from Shirley's home to her school and in particular whether the nearest available route exceeded three miles, she being in the older age group referred to in S39(5), quoted above. The dispute arises in the following circumstances.

The facts:

The distance from Shirley's home to the school by the shortest route is 2.94 miles. That route involves crossing Copford Plains by an isolated and partly unmade track which is entirely unlighted. In winter this route is one of considerable danger for a young girl who would have to walk over Copford Plains in darkness.

Copford Plains are also extremely difficult to cross in winter and may be passable on foot in the morning but impassable by the evening. There is an alternative route by metalled roads but this is 3.2 miles in length.

The parents quite reasonably regard the Copford Plains route as unsuitable for use by Shirley, if unaccompanied. Thus, since as stated above, the local authority were only prepared to make the school bus available on payment of

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the concessionary fare, which the parents were not willing to pay, Shirley stayed away from school during the period from 13 December 1983 until 17 April 1984. Informations were then preferred against the parents by the local authority alleging that the parents were guilty of an offence against S39. On 23 May 1984 the justices for the county of Essex, sitting at Colchester, convicted the parents and ordered that they both be conditionally discharged for a period of 12 months. The parents appealed to the Crown Court at Chelmsford and on 13 July 1984 the appeal against conviction was dismissed.

The appeal against sentence was allowed to the extent of substituting absolute discharges for the conditional discharges imposed by the magistrates. The Crown Court expressed considerable sympathy for the parents but concluded that they were bound by the decision of the Divisional Court in *Shaxted v Ward* [1954].

The parents appealed by the case stated to the Divisional Court. I have already set out the material facts which the Crown Court found. There was no finding that the route was impassable on any day that Shirley failed to attend or that the route was unsuitable, if she was accompanied. At the hearing of the appeal by the Divisional Court on 4 February 1985 the parents repeated their contention that the nearest available route of which the walking distance from a child's home to his school is measured for the purpose of the 1944 Act, must be, not merely the nearest route which a child can lawfully walk, but a route which a responsible parent would allow a child to use unaccompanied. In a reserved judgement Parker LJ, with whom Tudor Evans J agreed, accepted this and distinguished *Shaxted v Ward*. On 10 May 1985 the divisional Court gave leave to appeal to your Lordships' House on terms that the local authority would not seek to disturb the order for costs in the Divisional Court and would pay the parents cost of this appeal in any event. The certified point of law of general public importance is in these terms:

“Whether the nearest available route by which the walking distance of a school from a child's home is to be measured for the purposes of the Education Act 1944 must be not merely the nearest route which a child can walk without trespassing but a route which a responsible parent could allow a child to use unaccompanied.”

Shaxted v Ward

This decision is, of course, not binding on your Lordships' House and whether or not the Divisional Court was entitled to distinguish it, as it purported to do, is not an issue which need concern your Lordships. Nevertheless, it was a decision of a strong court which has stood unchallenged for over 30 years and has been relied on over that period by local education authorities. It involved considering the crucial S39(5) of the 1944 Act and the facts of the case were similar to the facts in this appeal. It concerned two young children who were under eight years of age and the route from their home to the school, at which they were registered pupils, was under two miles. The route was safe for the children to use, if escorted, but there was a particular portion of the road near the school where for small children, an escort would be desirable. The prosecutor contended that “available route” meant a route which could be followed without committing a trespass. The justices accepted this submission and the parents were convicted. They accordingly appealed by case stated.

At the outset of his judgement Lord Goddard CJ said:

“The short point that arises is this: The Justices found that the route which these children had to travel was “safe for these children to use, if escorted. The bit of road near the school, where an escort would be desirable for small children, was common to both the children in question.” I think that the justices recognised that it would be desirable for children to be escorted or in some way conducted along or across a certain piece of road where there was probable a good deal of traffic. They found that it was usual for parents to provide escort for their children to and from school, where necessary”.

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Having referred to S39 of the 1944 Act Lord Goddard CJ continued;

“The justices have to find whether the school is within walking distance; and it is that the route which the children took, which was under two miles, was not the “nearest available route” because part of it was said to be dangerous for children to walk along unescorted. I cannot read the word “available” as meaning necessarily safe, because we can see how these words came to be included in the Act.”

Lord Goddard CJ then considered the earlier Education Acts where the words “measured according to the nearest road” were used and concluded that the words in the 1944 Act “measured by the nearest available route” were not intended to make any change in the law. He then stated:

“To some extent I sympathize with the views of the parents in this case and it may be that they would like to bring pressure upon the Kent County Council to have a person on the road to see that “this bit of the road”, as the justices call it, is safe for the children to cross. Those, however, are matters for the education authority to consider and to put into operation if they think fit. I can only say that, if there is a road which measures not more than two miles or a route along which a child can walk and its measurement does not exceed two miles, that is the nearest available route. It may sometimes be unsafe; sometimes the route may be flooded, and, if that happened and the person could not walk along the road, that might be a reasonable excuse for not using it on that particular day, but we are not concerned with that but with a case where the parents think that the route is not safe. Parliament has not substituted safety as the test but the distance. Any question with regard to safety must be and I have no doubt, will be taken into consideration by the education authority. In my opinion, therefore, the justices came to a right decision and the appeal fails.”

Byrne and Parker JJ both agreed.

It has been urged before us that in his judgement Lord Goddard CJ, when considering whether a route was available, was discounting all safety considerations. I cannot accept this submission. In the context in which the Lord Chief Justice made his observations he was concerned with a route which was said to be dangerous only if the children walked along it unescorted.

The true meaning of ‘availability’ in S39(5) of the Act

In the submissions made to your Lordships it was common ground that available in the context of S39(5) means capable of being used. During the course of the argument counsel for the local authority appeared reluctant to accept that for a route to be available it must be reasonably capable of being used. His reluctance seemed to stem from an anxiety on behalf of his clients not to accept the responsibility from time to time of deciding whether or not the route which is the nearest route is reasonably capable of being used by a child of the relevant age not withstanding that under S39(2) the onus is clearly on the parent to prove that the school is not within walking distance of the child’s home. It is clear that the word available qualifies the word route. The availability of the route cannot be determined by the mere study of a map. That it must be reasonably practicable for a child to walk a long it to school does not, to my mind, admit of any argument. Of course it must be free from obstructions or obstacles which would make its use impracticable. Dangers inherent in a particular use are factors that must be taken into account when considering its availability. A route which involved crossing a river by means of a footbridge would, other things being equal, qualify as an available route. However, if as a result, for example, of recent severe flooding, the bridge became unstable and unsafe to use, that route would cease to be available.

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The short issue in this appeal is whether ‘availability’ is to be measured by what is reasonable for an unaccompanied child to use? Counsel for the parents was constrained to concede that in a case of a very young school child, certainly a child of five, six or seven. Parliament must have assumed that the child would be accompanied, however short the distance, if there existed any real hazard, e.g. crossing a busy road. Accordingly, there would be few, if any routes in the first category provided for in S39(5) (the two-mile route) which any responsible parent would allow an unaccompanied child to use. If the availability of the route was to be measured by what is reasonable for an unaccompanied child who had not attained the age of eight years, there would have been no point in prescribing in the subsection the two mile route requirement. Any such child with very few exceptions would have to be provided with free transport, although in practice, as Parliament must have appreciated, such a child would almost always be accompanied, so the transport would not, in fact have been necessary at all. The crucial point appears not to have been considered by the Divisional Court. It is certainly not referred to in the judgement of Parker LJ.

What then was the purpose of defining ‘walking distance’ in relation to a child who had not attained the age of eight years? The answer, to my mind, is clear: it was simply to provide that where the nearest route from home to school was reasonably capable of being used by a child along or (in the majority of cases) with an escort and did not exceed two miles, the school was within ‘walking distance’ of the child’s home. If, as is rightly conceded, the route does not in that situation fail to qualify as ‘available’ because of the dangers which would be consequent on the child being unaccompanied, when, if at all, would this route thus fail to qualify? Counsel for the parents submits that once the child is of sufficient age to go out on a street alone, then if the route is not reasonably safe for the child to walk along it unaccompanied the route is not ‘available’. Quite apart from the fact that there are no words in the section to support such a submission, the test suggested is hopelessly vague. What sort of street is one to have in mind, what sort of traffic is it to carry, what time of day, indeed what weather or season is to be assumed etc? Further, is the test an objective test applicable to all children of a given age or is it to be applied subjectively to the particular child whose parents have raised the issue? The complete impracticability of such a test in itself persuades me that it was never in the contemplation of Parliament. In my judgement a route to be ‘available’ within the meaning of S39(5) must be a route along which a child accompanied can walk and walk with reasonable safety to school. It does not fail to qualify as ‘available’ because of dangers which would arise if the child is unaccompanied.

It has been argued that unless your Lordships decide that availability has to be measured by what is reasonable for an unaccompanied child, then parents who normally accompany their children, but who fail to do so temporarily because of some crisis such as illness and as a result the child fails regularly to attend school, will have committed a criminal offence. In my judgement this submission overlooks S39(2)(a) which provides that the child shall not be deemed to have failed to attend regularly if he was prevented from attending by reason of ‘any unavoidable cause’.

There is a final point which I would wish to stress. Under S55 of the Act, which is set out in extensor above, the local education authority has a discretion to provide free transport where the relevant walking distance is less than three miles (or, as the case may be, two miles). The local authority in their written case fully accepted that if a local education authority failed unreasonably to exercise this discretion, it would be liable, on an application for judicial review to be ordered to carry out its statutory duty. In fact, in pursuance of their powers under S55(2) the local authority, having been satisfied that the parents did not qualify for free transport on a means test basis, in the exercise of this discretion offered the use of the school bus at the concessionary fare referred to above.

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I would accordingly allow this appeal, discharge the order of the Divisional Court and would answer the certified point of law in the negative. In view of the local authority's undertaking not to disturb the order for costs made by the Divisional Court and to pay the costs of the parents of this appeal. I would make no order as to costs.

LORD OLIVER OF AYLMEYTON.

My Lords. I have had the opportunity of reading in draft the speech delivered by my noble and learned friend Lord Ackner. I agree with it and concur in the order which he proposes.

Appeal allowed. No order as to costs.

Solicitors: RW Adcock, Chelmsford (for the local authority): Ellison & Co. Colchester (for the parents).

Mary Rose Plummer Barrister.

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Article: 'The Times' House of Lords – Law Report December 2nd 1988

Reasonable to expect child to be accompanied

Regina v Devon County Council, Ex parte George

Before Lord Keith of Kinkel, Lord Bradon of Oakbrook, Lord Oliver of Aylmerton, Lord Goff of Chieveley and Lord Lowry [Speeches December 1]

A local education authority has been entitled to refuse free transport to and from school for a boy aged nine who lived 2.8 miles away. The authority had been entitled to conclude that it was reasonably practicable for the boy to be accompanied and to take that into account in reaching its decision.

The House of Lords allowed an appeal by the authority from the Court of Appeal (Lord Donaldson of Lynton, Master of the Rolls, Lord Justice Parker and Lord Justice Taylor) (The Times March 22; [1988] 3 WLR49) who had reversed the decision of Me Justice Mann dismissing an application by the boy, Christopher Noel George (by his stepfather and next friend Mr Paul George), for judicial review of the authority's decision.

The Education Act 1944 provides by Section 36: "It shall be the duty of the parent of every child of compulsory school age to cause him to receive efficient full time education, by regular attendance at school or otherwise".

By Section 39:

- (1) If any child of compulsory school age who is a registered pupil at a school fails to attend regularly, the parent shall be guilty of an offence.
- (2) the child shall not be deemed to have failed to attend regularly if the parent proves that the school is not within walking distance of the child's home and that no suitable arrangements have been made by the local education authority for his transport to and from the school.
- (5) 'walking distance' means, in relation to a child who has not attained the age of eight years, two miles and in the case of any other child three miles measured by the nearest available route.

By Section 55:

- (1) A local education authority shall make such arrangements for the provision of transport and otherwise as they consider necessary, for the purpose of facilitating the attendance of pupils at schools, and the transport provided in pursuance of such arrangements shall be provided free of charge.
- (2) A local education authority may pay the whole or any part, as the authority think fit, of the reasonable travelling expenses of any pupil for whose transport no arrangements are made under this section.
- (3) In considering whether or not they are required by sub-section (1) above to make arrangements in relation to a particular pupil, the local education authority shall have regard (amongst other things) to the age of the pupil and the nature of the route, or alternative routes, which he could reasonably be expected to take.

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(Section 55(2) was amended by section 11 of Schedule 1, Part 1 to the Education (Miscellaneous Provisions) Act 1984. Subsection (3) was added by amendment under section 53 of the Education Act (No. 2) Act 1986, which came into force on January 7, 1987.)

Mr Conrad Dehn, QC and Mr Raymond Cox for the authority: Lord Campbell of Alloway, QC and Mr John Friel for the Boy.

LORD KEITH said that the boy's route to the school was rural, unlit and without a footpath and used to some extent by tractors, milk tankers and cattle wagons.

The council's policy on school transport was set out in a document including a paragraph 3(d) revised on March 12, 1987: "Transport to be provided without charge to children within the statutory walking distance where (i) having regard amongst other things to the age of the child and the nature of the route or alternative route which he could reasonably be expected to take, they consider it necessary for the purpose of facilitating his attendance at school; (ii) an authorised officer of the school health service certifies that transport is required for the child on medical grounds; (iii) the director of social services advises that there are overriding social needs that make the provision of transport essential; (iv) the education committee decides on the merits of a particular case that special arrangements should be made."

The minutes of the council's school transport panel's decision of March 18, 1987, read:

"We have had regard amongst other things to Christopher's age (nine) and the nature of the route which he could reasonably be expected to take. We are satisfied that the route in question which is 2.8 miles long and therefore within the statutory walking distance for a child of that age is one which an accompanied child can walk with reasonable safety and that the council is not required by section 55(1) ... to make arrangements in relation to him.

"Further, in our opinion, this is not a case where, in the council's discretion, transport should be provided free of charge. None of the circumstances set out in paragraphs 3(d)(i)-(iv) of the council's policy exist.

"There is no suggestion that Christopher is not a normal healthy boy for his age. We would expect a child of Christopher's age walking this route to be accompanied but are not satisfied that it would not be reasonably practicable for one of Christopher's parents to accompany him or otherwise secure his regular attendance at school."

The reference to the child being accompanied clearly had an eye to the decision of the house in *Rogers v Essex County Council* (1987 AC 66, 78) where Lord Ackner had said:

"A route to be 'available' within the meaning of section 39(5) must be a route along which a child accompanied as necessary can walk and walk with reasonable safety to school. It does not fail to qualify as 'available' because of dangers which would arise of the child is unaccompanied."

To 'facilitate' section 55(1) meant to "make easy, promote, help forward," (Concise Oxford Dictionary). In an Inquiry under the Company Securities (Insider Dealings) Act 1985 (1988 AC 660, 704), Lord Griffiths, in a different context, had paraphrased "necessary" as "really needed", which was a helpful way of expressing the concept.

The question under section 55(1) regarding pupils living within the statutory walking distance was whether the authority considered arrangements for free transport to be necessary for the purpose of facilitating their attendance.

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Obviously free transport would make the attendance of every such pupil easier, however close to school he or she happened to live, but that could not determine the matter. It was for the authority, and no one else, to decide whether free transport was really needed for the purpose of promoting the attendance at school of a particular pupil.

That must depend on the authority's view of the circumstances of the particular case, to which it was directed by section 55(3) to have regard. Its function in that respect could be described as a 'discretion', although it was not, of course, an unfettered discretion but rather in the nature of an exercise of judgement.

The intention of Parliament clearly, was that pupils living outside the statutory walking distance would in all cases be provide with free transport and that pupils within that distance would normally walk to school but would be provided with free transport if the authority considered it necessary for the purpose for facilitating their attendance.

His Lordship could find nothing in the council's policy document inconsistent with that intention.

It was apparent that the school transport panel had taken into account Christopher's age and the nature of the route, in particular its length. The senior assistant education officer had inspected it.

There had been material on which the panel might properly have concluded that it was reasonably practicable for the boy to be accompanied, in respect that his stepfather had stated in an affidavit that he was unemployed and available for the purpose.

There was nothing to suggest that the panel had not been exercising a judgement as to whether free transport was necessary for the purpose of facilitating Christopher's attendance at school.

It had been argued on his behalf that the matter of the accompaniment of a child was relevant only to the availability of a route under section 39(5) and that an authority was not entitled to take into account under section 55(1) even the possibility of a child being accompanied.

So, if a route, however short, was unsafe for an unaccompanied child, the authority was obliged to provide free transport. That argument had to be rejected. By section 39, the parent was under a legal duty to bring about the child's attendance at school. There were various things that a parent might have to do to that end, such as seeing that the child got up in the morning and set out in reasonable time. In the case of an unwilling child, it might be necessary for the parent to take the child to school.

In general, the parent had to do those things that were reasonably practicable to be done and that an ordinary prudent parent would do. That might include accompanying the child where it would be unsafe for it to go unaccompanied.

If a child lived 100 yards from school but the route involved crossing a busy trunk route and the parent, although available to do so, refused to accompany the child and refused to allow the child to go to school on the ground that it would be dangerous, the parent would be guilty of an offence under section 39(1); neither paragraph (a) nor paragraph (b) would avail him.

It followed that parliament had contemplated that in appropriate cases a child would be accompanied to school.

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So a local education authority was fully entitled, when making a decision under section 55(1), to take into account whether or not there were any circumstances that prevented its being reasonably practicable for the child to be accompanied to school over a route that would fail to be treated as not available to an unaccompanied child.

It had not been demonstrated that the council had made any mistake in law as to the nature and extent of its duties and powers, nor had its decision in the present case been unreasonable. Lord Brandon, Lord Oliver, Lord Goff and Lord Lowry agreed.

Solicitors: Sharpe Pritchard for Mr. W. A. Burkinshaw, Exeter; Teacher Stern Selby.

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Guidance on Religion and Belief from DCSF 2006

Section 509AD of the 1996 Act (inserted by the Education and Inspections Act 2006) places a duty on local authorities in fulfilling their duties and exercising their powers relating to travel to have regard to, amongst other things, any wish of a parent for their child to be provided with education or training at a particular school or institution on grounds of the parent's religion or belief. This duty is in addition to the duty on local authorities to make travel arrangements for children of parents on low incomes who attend the nearest suitable school preferred on grounds of religion or belief, where they live more than 2 miles, but not more than 15 miles from that school considered (see paras 99 to 101). The definition of "religion or belief" follows that of the Equality Act 2006.

Under this Act, "religion" means any religion, and "belief" means any belief. References to "religion or belief" include references to a lack of religion or belief. It therefore follows that this duty covers all religions and denominations, as well as philosophical beliefs.

It should be noted that "religion" and "belief" are not opposites, and there may be considerable overlaps in the coverage of the two terms.

The definition of "religion" includes those religions widely recognised in this country such as Christianity, Islam, Hinduism, Judaism, Buddhism, Sikhism, Rastafarianism, Baha'is, Zoroastrians and Jains. Equally, denominations or sects within a religion can be considered as a religion or religious belief, such as Catholicism or Protestantism within Christianity. The Department believes that the main limitation on what constitutes a "religion" is that it must have a clear structure and belief system.

For a "belief" to be worthy of protection, it must attain a certain level of cogency, seriousness, cohesion and importance; be worthy of respect in a democratic society; and not be incompatible with human dignity or the fundamental rights of the child.

Case law suggests that "belief" equates to "conviction", and based on European case law, it has to be more than an opinion or idea. A belief must be genuinely held and the parent bears a heavy burden of showing that it is the real reason for whatever it is they are doing.

Based on case law, the Department considers that the following may be considered as philosophical beliefs in the educational context:

- parental objections to the use of corporal punishment in school;
- belief in single sex education, where that belief is based on the parent's religious views.

"Beliefs" which have been considered as not meeting the requirements of cogency, seriousness, coherence, and so on – and are not therefore included in this duty, include:

- a wish for a child to attend a particular category of school. The case law concerned a grant maintained school, but the Department would consider a specific wish to attend, for example, a grammar school as fitting this category. In the view of the Department, a local authority would not have to have regard to such a wish when determining whether or not to make transport arrangements for a particular child;
- preference for a particular type of management or governance which does not affect the curricula or teaching at the school;

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- a belief that a child should be educated privately;
- a wish for child to attend school where they will be taught in a particular language;
- objection to rules requiring that a school uniform must be worn;
- content of school curriculum (sex education) provided that the curriculum did not amount to indoctrination in compatible with a parent’s religious or philosophical convictions;
- objections to the curriculum, where special arrangements made by the school or authorities (such as allowing children to be withdrawn from class) ensure the curriculum is not forced on them contrary to their convictions; and
- belief that a child should receive a particular type of educational provision.

This guidance deals with the implications of this duty in relation to the duty to promote sustainable travel, and the duties and powers relating to the provision of travel arrangements to schools and other places.

“Religion or belief” and the duty to promote sustainable travel

The duty to promote sustainable travel includes assessments of the travel needs of children and young people, and of the infrastructure supporting those needs. Travel needs include travel to and from school, further education institutions, and other places where education or training might be delivered, and travel between schools, and between schools and other educational institutions (including further education institutions and all other places where education or training may be delivered).

In fulfilling this duty, local authorities must consider the travel needs of pupils whose parents express a wish, based on religion or belief, for their children to attend a particular institution, and how the existing sustainable travel infrastructure might support travel to such schools and institutions. They must also consider how the infrastructure might be improved so it better meets the needs of children and young people, and how to promote sustainable travel on such journeys.

“Religion or belief” and the provision of school travel arrangements

Many parents will choose to send their children to a school as near as possible to their home. However, some parents choose to send their children to a school with a particular ethos because they adhere to a particular faith, or philosophy. In many cases these schools may be more distant, and many local authorities adopt home to school travel policies that facilitate attendance at such schools. The Act places a duty on local authorities to make arrangements for pupils from low income backgrounds to attend the nearest school preferred on grounds of “religion or belief”, where that school is between 2 and 15 miles from their home.

Whilst under the European Convention on Human Rights (ECHR), parents do not enjoy any right to have their children educated at a faith or a secular school, or to have transport arrangements made by their local authority to and from any such school, the Secretary of State hopes that local authorities will continue to think it right not to disturb well established arrangements, some of which have been associated with local agreements or understandings about the siting of such schools.

The Secretary of State continues to attach importance to the opportunity that many parents have to choose a school or college in accordance with their religious or philosophical beliefs, and believes that wherever possible, local authorities should ensure that transport arrangements support the religious or philosophical preference parents express.

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Although the provisions of the Equality Act 2006 (which places a duty on local authorities not to discriminate against a person on the grounds of their religion or belief), do not apply to the exercise of an authority's functions in relation to transport, local authorities will need to be aware of their obligations under human rights legislation.

In exercising their functions, local authorities will therefore need to respect parents' religious and philosophical convictions as to the education to be provided for their children in so far as this is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure. It may be incompatible, for example, on grounds of excessive journey length, or where the journey may have a detrimental impact on the child's education. Local authorities should also ensure that they do not discriminate contrary to Article 14 of the ECHR. For example, where transport arrangements are made for pupils travelling to denominational schools to facilitate parents' wishes for their child to attend on religious grounds, travel arrangements should also be made for pupils travelling to non-denominational schools, where attendance at those schools enables the children to be educated in accordance with their parents' philosophical convictions, and vice versa.

Children from low income backgrounds are eligible for free travel arrangements to the nearest school preferred on grounds of "religion or belief" (see paras. 99 to 101). However, local authorities may wish to use their discretionary powers to extend transport arrangements beyond this statutory requirement. Where local authorities make arrangements under their discretionary powers (section 508C), and have policies of levying charges for such transport, the Secretary of State believes that local authorities should pay careful attention to the potential impact of any charges on low income families whose parents adhere to a particular faith or philosophy, and who have expressed a preference for a particular school as a result of their religious or their philosophical beliefs. In the Secretary of State's opinion, where local authorities make travel arrangements for such children, these should be provided free of charge in the case of pupils from low income families (pupils entitled to free school meals or whose parents are entitled to their maximum level of Working Tax Credit).

Local authorities should give careful consideration to discrimination issues, and seek legal opinion if they are unsure about the effect of their policies, before publishing them each year.

Case Law referred to in this guidance:

Campbell and Cosans v UK (1982) 4 EHRR 293
 Warwick v UK (1989) 60 37 DR 96
 R (ota K) v Newham LBC ([2002] EWHC 405 (Admin)
 Dove and Dove [2001] ScotCS 291
 CB v Merton [2002] EWHC 877 (Admin); R v Department for Education and Employment ex p Begbie [1999] ELR;
 and W and DM v UK ((1984) 37 DR 96).
 Stevens v UK 46 DR 245 (1986)
 Alonso and Merino v Spain
 Kjedsen, Bus, Madsen and Pedersen v Denmark (1976) I EHRR 711
 T v SENT and Wiltshire CC [2002] EWHC 1474 (Admin).

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