

Response to Haringey Council's Consultation
Promoting independence, enabling mobility: Haringey's draft Travel Policy 2016

Save Autism Services Haringey (SASH)

This response focuses on the implications of the draft policy for adults with autism and learning disabilities and their family carers.

Recommendations

- 1. The scope of the policy including the range of different adults covered by the policy would benefit from further clarification.*
- 2. The draft policy should be scrutinised by a lawyer specialising in care law and amended according to their advice.*
- 3. The priority given to the principle of promoting independence over other principles sends out a wrong message to council staff and service users that provision or non-provision can be justified by this principle alone.*
- 4. The policy expressly rejects the notion that some people have a right or entitlement to assisted travel. This statement does not comply with the Care Act and should be removed from the policy.*
- 5. Throughout the policy promoting independence is out of kilter with promoting needs-entitlement leading to a gross imbalance – indeed ideological imbalance in view of the council's wide ranging cuts – in the direction travel policy is taking in the Borough.*
- 6. The final policy should state expressly how charging for travel assistance works.*
- 7. The final policy should remove the assumption that carers and family members are willing and able to take over the council's duty to transport users with care plans to their services.*
- 8. When making requests of family carers to undertake duties previously done by the council, council staff should make clear in a written statement that this undertaking is based on the carer's willingness and ability.*

Scope (p13)

The scope of the policy including the range of different adults covered by the policy would benefit from further clarification. The policy excludes children and adults up to 25 who have a SEND. Does this mean that individuals in this group who have moved from SENDs to EHC Plans are likewise excluded?

The policy applies “specifically to travel arrangements required to access services or support identified as part of an adult social service funded care package”. Presumably most members of this group have a care and support plans under the Care Act, but they are not exempt from the policy. It is not clear why the first group is exempt but not the second.

Moreover the group most affected by the policy appears to be adults who are covered by the Care Act - as the following shows - and benefit from the Act's entitlements,

The draft recognises that the Care Act is central to the policy with its "wider focus on promoting wellbeing, preventing, reducing or delaying need and information, advice and guidance". But the Act is mentioned only twice in the entire policy. Apart from the principle of promoting independence, there is no account of how other principles promulgated by the Act govern the policy. Further the draft makes no references to the role of other statutes placing duties on the council in how it exercises its travel policy.

The draft policy should be scrutinised by a lawyer specialising in care law and amended according to their advice. If the draft has been seen by the Council's legal department, their advice should have formed part of the consultation documentation.

General principle (p13)

The policy is based on the general principle that "service users will meet their own needs for travel to access and take advantage of existing services or support" in order to "develop[ing] the service user's independence, social and life skills". This is intended to apply to all aspects of the assessment and provision of travel support.

This principle is expressly used without reference to the Care Act principle that people with assessed needs are entitled to a broad range of provisions funded by local authorities, including travel assistance. Reference to people who have a need for travel assistance is referred to in the draft only as an *exception* (eg para 3.3, see below).

There are service users who will benefit from being encouraged to travel independently, and whose assessed needs point to this potential. However *the priority given to the independence principle over other principles sends out a wrong message to council staff and service users that provision or non-provision can be justified by this principle alone*, without regard to the principle of entitlement applying to both users and carers. 'Need' is given a lesser status as just one consideration in a list of Care Act principles, eg "The overriding principle is that the decision to provide transport is based on needs, risks and outcomes and on promoting independence" (13). Need is not articulated as a guiding principle in its own right. Rather, the principle of promoting independence is articulated as a guiding principle throughout the policy and organises the way travel provision is allocated to users. Likewise the principle of risk is also given a role - albeit a lesser role - in articulating provisions in para 3.6.

Using the independence principle alone has two consequences.

1. The draft policy contravenes the Care Act duty to meet need

The centrality given independence in the policy undermines the importance the Care Act places on assessed needs and the user's and carer's own statements of the outcomes they want to achieve in seeking to meet their needs. Indeed *the policy expressly rejects the notion that some people have a right or entitlement to assisted travel*. To say in a blanket statement that "Travel arrangements are not a service in its own right" is wrong and contrary to the Care Act. There are people with assessed needs who *do* have a right to council-assisted travel. *This statement should be removed from the policy*. If it remains it could be used to justify actions by council officers that would questionably lead to legal challenge.

The concept of need figures merely as a condition for *exempting* people from the principle of independence, rather than as a general principle to promote wellbeing. For example, para. 3.3 on eligibility lists considerations for exempting users from the policy which reference the needs of users and carers. One of which is:

- The client is not able to use public or community transport for health or other identified reasons.

Throughout the policy promoting independence is out of kilter with promoting needs-entitlement leading to a gross imbalance – indeed ideological imbalance in view of the council's wide ranging cuts in adult services – in the direction travel policy is taking in the Borough.

Charging

Para. 3.4, on charging for travel assistance fails to state what the policy is. *The final policy should state expressly how charging for travel assistance works.*

Process

Para. 3.7 refers to the Care Act principle of need but only as a secondary principle “after all travel options including an individual’s use of Personal Independence Payment (PIP) (mobility component) and other transport concessions have been considered”.

Recommendation

The policy would benefit from a closer examination of the governing principle of need as it operates in the Care Act and should incorporate this core principle into the policy. Under the heading ‘Needs which meet the eligibility criteria: adults who need care and support’, regulation 2(i) of *The Care and Support (Eligibility Criteria) Regulations 2015* refers to “making use of necessary facilities or services in the local community including public transport...”. Assistance in making use of public transport to access services in the community – including council services and council-funded services – is stated as an outcome to enable users to meet their assessed needs. Such assistance would include council-provided or -funded alternatives to public transport, such as taxi or bus services where appropriate on the basis of need, as well as assistance in using public transport, eg by providing council-funded care assistants to accompany users on public transport. Regulation 2 in its entirety supports the governing principle of need in the Care Act and lists some of the outcomes that secure need.

2. The policy ignores the needs of carers under the Care Act

In the Act the principle of need applies equally to the needs of carers as well as service users. This points to a second consequence of prioritising the independence principle: that the policy gives only passing recognition to *carer’s* needs. For example, the policy repeats the assumption that family members are available and expected to use their own cars to transport adult users to services: “Travel arrangements will *not* be provided if...Other modes of travel are available for example walking, access to a family car or a vehicle funded through Motability”. Whilst the rider – providing “it doesn’t place an unreasonable additional responsibility on family or other carer” – is added, examples have come to the attention of SASH of families with Motability cars being required by transport staff (located in Children & Families) to use their Motability cars to transport adult children to daycentres and colleges,

without establishing whether family members were willing and able to do this. Previously these users had been transported by council-funded bus and taxi services. If the user's care plans had not recorded a reduction in assessed need, which might have permitted a change in transport provision, this practice was possibly unlawful.

The Care Act is clear about what expectations can be placed on family carers. In general terms the assessment of an adult in need must not assume the type and amount of care provided by the carer. Para 6.113 of the Care Act Statutory Guidance, says "Authorities must only take consideration of whether the adult has a carer, or what needs may be met by a carer *after* the eligibility determination when a care and support plan is prepared" (stress added). S10(5) of the Act requires that assessments must take into account the extent to which the carer is 'willing, and is likely to continue to be willing' to provide care. Para 2.49 of the Guidance states that LAs "should not assume that others are willing or able to take up caring roles".

The final policy should remove the assumption that carers and family members are willing and able to take over the council's duty to transport users with care plans to their services. When making requests of family carers to undertake duties previously done by the council, council staff should make clear in a written statement that this undertaking is based on the carer's willingness and ability to undertake these tasks.

Other points – travel assistance options, p16

The policy should consider and cost the viability of employing a team of drivers to drive service users' Motability cars to transport users to services. This should be considered as a further travel assistance option that would contribute to saving on costs already subsidised by the Motability scheme such as insurance and petrol. It would also avoid placing additional responsibilities on family members to drive their adult children to services.

Conclusion

Whilst promoting independence is itself a human need, the primacy given to this principle over others raises questions about the policy's compliance with the Care Act, in particular in meeting all needs arising from disability.

(Save Autism Services Haringey – 3 October 2016)

SAVE AUTISM SERVICES HARINGEY is a group of parents and carers of adults with autism in Haringey (including some with learning disabilities, mental health problems, epilepsy and other complex needs) who are campaigning to save services from cuts.