



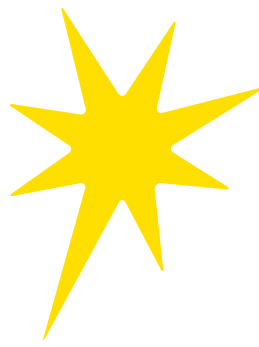
# Factsheet

Transition, transport and travel  
support to education and training for  
young people with EHC plans

CEREBRA



Working wonders for children  
with brain conditions



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Thank you.

# Transition, transport and travel support to education and training for young people with EHC plans

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## Aims

Many young people with a disability or special educational needs (SEN) aren't independent travellers, and understanding what their rights are with regard to transport if they move on to education and training after compulsory schooling<sup>1</sup> can be very confusing.

Many local authorities refuse to provide free transport to any young people aged 16-19 (Years 12-14), whatever their personal circumstances may be, and can charge more than £1,000 per year to provide transport. Even if the young person is eligible for a bursary or can access a hardship fund some families still struggle to pay the charge<sup>2</sup>.

Clearly, this is an important factor when considering transition after compulsory school age. After all, there isn't much point in arranging for a school or college placement if the young person can't afford to get there.

The purpose of this factsheet is to look at what the law and government guidance say about transporting young people to their place of education or training. In some cases we also look at decisions the Local Government and Social Care Ombudsman has made<sup>3</sup>. It gives an overview of the current situation and isn't meant to be a definitive explanation. This is a complex area of law and if you think that your local authority may be acting unlawfully this factsheet isn't a substitute for expert legal advice. However, it will hopefully make you aware of some things that will be helpful to you and your child when making decisions about their future.

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<sup>1</sup> Compulsory school age begins in the term after a child turns 5 and ends on the last Friday in June in year the child turns 16, provided that their 16th birthday falls before the start of the next school year

<sup>2</sup> Please see Contacts '[Close the Loop](#)' survey 2020

<sup>3</sup> The Ombudsman has also produced a report on issues with school/college transport which can be found [here](#) under 'Downloads'.

Many disabled young people will have an Education, Health and Care (EHC) plan<sup>4</sup>. EHC plans can cover children and young people from 0 – 25 years old. Transition planning for adulthood must be part of the annual EHC plan review when your child is 14 (Year 9). It must also be part of all subsequent annual reviews and be built into revised EHC plans<sup>5</sup>.

So, it's possible for a young person having an annual review when they're 14 to continue with education and training until they're 25. For young people with an EHC plan this time period covers 3 categories of learners:

- Compulsory school age learners: (14 – 16 years old)
- Sixth-form age learners: (16 – 19 years old<sup>6</sup>)
- Adult and relevant young adult learners<sup>7</sup> (19 – 25 years old).

Confusingly, different rules apply to each of these categories.

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<sup>4</sup> For more information about EHC plans please see our guide [Education in England: A Guide for Parents](#).

<sup>5</sup> [Special educational needs and disability code of practice: 0 to 25 years](#)/page 125/paragraph 8.9.

<sup>6</sup> Page 18 of the [Post-16 transport and travel support to education and training: Statutory guidance for local authorities](#) defines a person of sixth-form age as a person over compulsory school age but under 19 or a young person aged under 25, who has a current EHC plan and is on a course that started before their 19th birthday.

<sup>7</sup> Paragraphs 7(a) and 7(b) on Page 6 of the [Post-16 transport and travel support to education and training: Statutory guidance for local authorities](#) explains the difference between adult and relevant young adult learners, both of whom begin their current courses after their 19th birthday. The essential difference between the two is that an adult learner, who may have an EHC plan, attends a local authority maintained or assisted further or higher education institutions or institutions within the further education sector. However, a relevant young adult, who must have an EHC plan, attends an institution **OUTSIDE** the further and higher education sectors. Not only must the local authority have arranged the provision of the education or training at the institution concerned it must also have arranged the boarding in connection with the education and training.

We'll look at what the law and government guidance say for each type of learner but in order to make it easier to understand we're going to deal with them in the following order:

- Compulsory school age learners
- Adult and relevant young adult learners
- Sixth-form age learners

Taking them out of age order may seem an odd thing to do but please bear with us and hopefully all will become clear!

## Compulsory school age learners

For these learners the law<sup>8</sup> identifies 3 types of compulsory school age learners who have a right to free transport from their local authority:

- learners unable to walk to school because of their special educational needs, disability, or mobility problem (including temporary medical conditions)
- learners unable to walk in safety to school because of the nature of the route
- learners living outside the 'statutory walking distance', which is two miles for children under eight and three miles for older children. Special rules about distance apply to children from low-income families<sup>9</sup>.

If a learner falls into any of these categories their local authority must provide them with free transport. However, they will only be eligible for free transport to their nearest 'qualifying' school. This is defined as the nearest publicly maintained school, with places available, that provides education appropriate to the age, ability and aptitude of the child, and any special educational needs that the child may have. For children with an EHC plan you can ask your local authority to name a different school to the nearest qualifying school but you can be charged for some or all of the transport costs. However, please be aware

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<sup>8</sup> Schedule 35B of the Education Act 1966 as amended by the Education and Inspections Act 2006.

<sup>9</sup> Please see 'Extended rights eligibility' on page 11 of the [Post-16 transport and travel support to education and training: Statutory guidance for local authorities](#).

that if only one school is named in an EHC plan this means it's the nearest suitable school for school transport and it would be unlawful for you to be charged any transport costs if your child falls into one of the categories <sup>10</sup>.

Parents often tell us that local authorities refuse to provide free transport for their eligible child and insist on them using their children's higher rate Disability Living Allowance/Personal Independence Payment or Motability car to transport their child. In a case report <sup>11</sup> the Local Government Ombudsman disagreed with this interpretation of the law and had this to say on the matter:

"In March 2017 the Ombudsman issued a Focus Report 'All on board? Navigating school transport issues- learning lessons from complaints'. In this report we advised council's (sic) that:

- It is the conditions set out in the Education Act 1996 that are relevant to transport eligibility not whether a person receives disability living allowance (DLA). (The same principle would apply to Personal Independence Payment (PIP) which has replaced DLA for adults).
- Motability is the body that runs the Motability car scheme for those in receipt of DLA and PIP. Unless the council is the legal appointee for the disabled person, it is not in charge of the Motability agreement and cannot specify how a Motability vehicle can be used".

Please note that this would apply to all learners in the 3 categories we are discussing,

For more information on compulsory school age transport, and in particular expectations that parents will walk their child to school, please see

<sup>10</sup> Please see 'Charlie's Story' on page 10 of this [Ombudsman's Focus Report](#) (please click on Downloads).

<sup>11</sup> <https://www.lgo.org.uk/decisions/education/school-transport/18-007-722> /paragraph 16.

our guide [School Transport in England](#).

## Adult and relevant young adult learners

This category of learners falls under a different section of the law <sup>12</sup> and what we've discussed so far doesn't apply to them. Instead, a local authority must make arrangements for the provision of transport that they consider is 'necessary' for them to do so in order for an adult or relevant young adult to attend an education or training institution. Importantly, if a local authority does consider that it is necessary to make transport arrangements then they must be provided free of charge <sup>13</sup>.

This raises the question of: What does 'necessary' mean?

Unfortunately, the current guidance doesn't give any examples. However, it would be reasonable to believe that a local authority would consider it necessary to provide free transport to an adult/ relevant young adult with a disability who was not an independent traveller and had no other way of getting to their educational setting. Importantly, that is exactly what the Local Government Ombudsman has decided in reports concerning 3 relevant cases <sup>14</sup>

<sup>12</sup> Section 508F of the Education Act 1996, as inserted by section 57 of the Apprenticeships, Skills, Children and Learning Act 1996.

<sup>13</sup> Education Act 1996, section 508F, subsection 4.

<sup>14</sup> <https://www.lgo.org.uk/decisions/education/special-educational-needs/16-012-609>;  
<https://www.lgo.org.uk/decisions/education/school-transport/17-017-296>;  
<https://www.lgo.org.uk/decisions/education/school-transport/18-007-722>.

Significant comments made by the Ombudsman in these reports include:

"It was a relevant consideration that a 19-year-old is above statutory school age. The parent has no responsibility or legal obligation to ensure their son/daughter attends college<sup>15</sup>"

"The responsibility for transport was not the parent's responsibility<sup>16</sup>. Where a son/daughter has no other means of transport available to them it is not reasonable for the Council to place the parent/carer in a position where they are forced to transport them to/from college each day unsupported."

"The law says if a council considers it necessary for an adult, who is over 19, to have transport provision then it must be provided. It does not say it will only do so if there are exceptional or special circumstances..."

"Where the parent indicates they are not able or willing to drive their son/daughter to college each day they do not need to justify this or give reasons. Once a parent indicates they are not prepared to provide transport the Council should accept this and assess the transport application without reference to the availability of the parent/carer."

"There is no obligation on a parent/carer to find volunteers to drive their son/daughter to college. It is not an appropriate request and is an irrelevant consideration."

So, an adult/relevant young adult learner who is not an independent traveller and can't otherwise access transport to get to their educational setting has a right to free transport. Also, local authorities can't force parents to arrange transport on their behalf.

## Sixth-form age learners

We have seen that the government has passed legislation to ensure that a disabled young person who is not an independent traveller has a right to free transport to attend school up to, and including, the age of 16 and to attend a post-19 course up to the age of 25.

But what about the 16 to 19 year old age group which is sandwiched between these 2 categories of learners? Unfortunately, the law changes again<sup>17</sup> and this time no learners in this age group have an automatic entitlement to free transport no matter what their personal circumstances might be.

Whereas in the case of compulsory school age and adult/relevant young adult learners the law places duties on local authorities where they must provide free transport in certain situations there aren't any equivalent duties for the sixth-form age group. There aren't any situations where the law says that local authorities must provide free transport for these learners. Many people think that this is an unfair 'loophole' and that it doesn't make sense for a non-independent travelling disabled young person, for instance, to have free transport to their educational setting from 5 to 16 years old and again from 19 to 25 but in the interim 16-19-year-old period have to pay a significant sum each year.

And the Department for Education would seem to have some sympathy with this point of view. Although, as of the date of writing<sup>18</sup>, there haven't been any changes to the law.

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<sup>15</sup> Parents no longer have legal responsibility for their children once they become 18 years old.

<sup>16</sup> The young person concerned was over the age of 18

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<sup>17</sup> Education Act 1996, section 509AA.

<sup>18</sup> March 2020, review September 2023.

The latest issue of its statutory guidance to local authorities<sup>19</sup> states:

"Local authorities should be aware of the adult transport duty in carrying out their responsibilities for this (sixth-form) group, and it would be good practice not to charge a contribution for transport for a young person assessed under the sixth-form age duty if it likely that they will be eligible for free transport under the adult transport duty".

Although this statement can't compel local authorities to adopt it as good practice it's generally accepted that statutory guidance should be followed unless there's a compelling and justifiable reason not to.

It's also important to realise that although the law doesn't impose a duty on local authorities to provide free transport it equally doesn't say that they can't if they want to. Local authorities have a 'discretionary power' in this area meaning there's nothing to prevent any local authority choosing to provide free transport to this group of learners under certain circumstances. In fact public law principles mean it would be unlawful for a local authority to have a 'blanket policy' where it refuses to provide free transport under all circumstances. So statements in a local authority's post-16 transport policy such as the following would be unlawful:

*All 16-19-year-old learners must pay an annual contribution of £500 to their transport costs.*

By adopting such a policy a local authority would prevent itself from ever being able to provide free transport as **all** learners would always have to make a financial contribution. It effectively makes it impossible for the local authority to make an exception to the rule under any circumstances. This is known as 'fettering its discretion' and would

be unlawful.

Public law principles would also require a local authority to set out in its policy the precise circumstances when it would provide free transport. So, if a learner was refused free transport they could judge whether the policy has been applied correctly and consequently be in a position to make a properly informed complaint if necessary.

You may also find the following factsheets useful. Click on the links below to download:

[Transition to Adulthood in England](#)  
[Carers' Assessment in England](#)



<sup>19</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/772913/Post16\\_transport\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/772913/Post16_transport_guidance.pdf) / paragraph 37.





## About the author

Derek Tilley is currently working as part of the Cerebra Research Team and is the father of a young lady who happens to have Down's syndrome. As a result of his dealings with public services he has had a long interest in supporting parents with disabled children access their legal entitlements. Firstly, in the area of special educational needs with IPSEA and SNAP Cymru Parent Partnership Services before moving into the area of direct payments with Diverse Cymru. During this period Derek served as a third sector representative on the Cardiff Disabled Children's Strategy Development Group and the Cardiff Autism Strategy Development Group. He recently successfully completed an MSc in Social Science Research Methods at Cardiff University and is carrying out a PhD under the supervision of Professor Sally Power, Director of WISERD Education, Cardiff University, and Doctor Julie Doughty, School of Law and Politics, Cardiff University exploring issues related to the reoccurring problems parents of disabled children have obtaining their rights from the education, health and social services.

## About the reviewers

Professor Luke Clements is based at Leeds Law School and is a solicitor. He is a leading expert on community care law. He has drafted and assisted in the parliamentary passage of a number of Private Members bills. He has provided training for many Local Authorities, national organisations and charitable bodies. His books include: Community Care and the Law (Legal Action Group 6th ed 2017—jointly written with Pauline Thompson), Disabled Children: a legal handbook (Legal Action Group 3rd edition 2020—jointly written with Stephen Broach) and Carers and their Rights (Carers UK 4th ed 2010).

John Furlong works in the LEaP team supporting parents who have difficulties accessing social care for their disabled children. He previously worked in SEN law and has campaigned for the improvement of services for disabled children.

The findings of this report are those of the author, not necessarily those of Cerebra.

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# Working wonders for children with brain conditions

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