

The Ombudsman's final decision

Summary: Mrs X complained about the Council's decision to not provide her child, Y, with school transport assistance. The Council was at fault as it did not properly consider Y's needs and individual circumstances. We also found fault with the Council's policy as it is not in line with legislation. The Council has agreed it will provide transport assistance to Y, apologise to Mrs X, Y and their family for the time and trouble and distress the matter caused them and will make a symbolic payment to recognise this. The Council will review its policy and provide relevant training to staff. As part of this investigation, the Council identified another applicant where it incorrectly refused school transport. The Council has contacted the applicant and offered a suitable remedy for the injustice caused to them. It has agreed it will provide evidence to the Ombudsman it has done this.

The complaint

1. Mrs X complained about the Council's decision to not provide her child, Y, with school transport assistance. Mrs X said Y has a physical disability which means they need to use a wheelchair. Mrs X said as a result, the Council expects her to take Y to school by pushing them in their wheelchair. Mrs X said this has affected Y's mental health as they cannot independently go to their school. It has also caused distress to Mrs X and the family. Mrs X wants the Council to reconsider its decision.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)

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4. When considering complaints, if there is a conflict of evidence, we make findings based on the balance of probabilities. This means that we will weigh up the available relevant evidence and base our findings on what we think was more likely to have happened.
 5. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)
 6. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

7. I spoke with Mrs X's representative about her complaint.
8. I considered the information Mrs X and her representative provided.
9. I considered the information the Council provided.
10. Mrs X, her representative and the Council had the opportunity to comment on the draft version of this decision. I considered their comments before making a final decision.

What I found

The Education Act 1996

11. Councils have a duty to provide suitable home to school travel arrangements as they consider necessary for 'eligible children' of compulsory school age to attend their 'qualifying school'. The travel arrangements must be made and provided free of charge.
12. The relevant qualifying school is the nearest school with places available that provides education appropriate to the age, ability and aptitude of the child, and any special educational needs the child may have.
13. 'Eligible children' include:
 - children living outside the 'statutory walking distance' from the school (two miles for children under eight, three miles for children aged eight and above).
 - children living within walking distance of the school but who cannot reasonably be expected to walk to school because of their special educational needs, disability or mobility problem.
14. The Act and statutory guidance state councils must make transport arrangements for all children who have special educational needs, a disability or mobility problems who cannot reasonably be expected to walk to school. Councils should assess children on their individual basis to identify their particular transport needs. Usual transport requirements such as walking distances, should not be considered when assessing transport needs of children who are eligible due to special educational needs and/or disability.

The Council's home to school transport policy

15. The policy states children of compulsory school age attending a maintained school, or an academy will be eligible for assistance with transport from the Council if they meet the following general criteria:

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- the child attends the normal area school or a school closer than the normal area school or the nearest suitable school as determined by the Council; and
 - the child lives beyond the statutory walking distance from the school they are attending.
16. The statutory walking distance is two miles for children under the age of eight and three miles for children aged eight and above. The Council's policy states walking distance includes the distance travelled by wheelchair or mobility aids.
 17. The Council's policy provides a further list of 'eligible children' who will qualify for transport assistance. It includes children with special educational needs and/or disabilities (SEND) or mobility problems. The Council will provide transport assistance to them if they meet the general criteria as stated above.
 18. Transport arrangements will be made for both children with SEND and children with mobility problems whose school is within statutory walking distance of their home address, only if the Council is satisfied that the child cannot reasonably be expected to walk to school because of their mobility problems or because of associated health and safety issues related to their special educational needs and/or disability. Eligibility for such children will be assessed on an individual basis to identify whether they have any particular transport requirements.
 19. Where a child is eligible for transport assistance due to their SEND or mobility problems, transport assistance will be provided to and from the nearest suitable school. If they are not attending their nearest suitable school, the Council will not provide assistance.
 20. Where the Council has refused transport assistance, parents/carers can challenge the Council's decision via a two-stage appeals process. Stage one of the appeals process will be reviewed by a senior officer. Stage two of the appeals process will be reviewed by an independent appeal panel.

What happened

21. Mrs X's child, Y, has a physical disability which affects their mobility. Y uses a wheelchair to travel long distances. Y does not have an Education, Health and Care Plan. Y receives a Disability Living Allowance.
22. In September 2020, Y started attending a secondary school, School B. School B is not the nearest school from Y's home address. The distance is 1.3 miles. The Council had initially given Y a place at School A which is under a mile from Y's home address. However, Mrs X successfully appealed the Council's decision as School A was not suitable to meet Y's needs. School A was too big for Y to manage, and it was not fully accessible for someone who uses a wheelchair.
23. When Y started at School B, the School provided them with transport assistance from home to school via their school bus. However later in 2021, the School had announced it would stop providing the transport service as it was no longer feasible. By December 2021, the School stopped providing its own transport provision. Since then, Mrs X and her husband have driven Y to and from school.

Application for school transport assistance

24. When the School announced it would stop providing a transport service, Mrs X applied to the Council for school transport for Y. She said it was not possible for Y to walk to school due to their disability. On the application, she stated she was applying due to Y's severe medical needs.

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25. The Council responded to Mrs X and said it was unable to provide Y with transport assistance. This was because Y was not attending their normal area school.

Stage one review

26. Mrs X requested the Council review its decision under stage one of its appeals process. She said:
- Y was attending their nearest suitable school after a successful appeal.
 - since the transport service had stopped, Y's physical and mental health had declined. Y had lost their independence as Mrs X and her husband were now taking Y to school.
 - she and her husband both worked different shifts and so it was difficult to tell Y who would be collecting them from school which caused Y further distress.
27. Mrs X also gave more information about Y's disability and how it had impacted their mobility to walk and go to school independently in their wheelchair. To support her request for a review, Mrs X provided the Council with medical evidence such as a letter from a consultant and a report from a physiotherapist.
28. A Senior Council Officer completed the stage one review. The outcome was:
- Y did not have any exceptional circumstances which would make it necessary for the Council to provide them with transport assistance.
 - Y's current school, School B, was not Y's normal area school and so the Council would not provide transport assistance.
 - if Y did attend their normal area school, School A, the Council would still not provide transport assistance as the distance from Y's home address to School A was less than three miles.
29. The Senior Officer explained children with special educational needs and/or mobility problems needed to meet the general criteria to be eligible for transport assistance. They added, as Y was in receipt of Disability Living Allowance, the Council would expect this to be used towards Y's transport needs including travelling to school.

Stage two review

30. Mrs X was unhappy with the stage one decision. She therefore requested the Council reconsider the decision via stage two of its appeal process. An Independent Appeal Panel considered Mrs X's case. The Panel did not uphold Mrs X's appeal and some of the reasons included:
- the Council does not provide transport assistance to suit family arrangements.
 - Y's parents both worked and had access to a car which could be used to take Y to school.
 - Y was not eligible for transport assistance under the Education Act.
 - Y would be eligible for transport assistance if they were unable to walk or use a wheelchair, accompanied if necessary, to get to school and if they were attending their nearest suitable school.
31. However, the Panel then said there was sufficient evidence to conclude Y would not be able to access School A as the site was not appropriate for someone who used a wheelchair. It therefore recognised School B was Y's nearest suitable school but said there was no evidence which showed Y could not be pushed to

and from school in their wheelchair. It was reasonable to expect Y to be accompanied to school and that the parents provided or arranged this.

32. Mrs X remained unhappy and complained to us.

Findings

The Council's home to school transport policy

33. The Council's policy says it will provide transport assistance to children with special educational needs and/or disabilities (SEND) or mobility problems if they meet the general criteria which is:
- they attend the nearest suitable school; and
 - they live beyond the statutory walking distance from the school they are attending.
34. The policy later says, the Council will provide transport assistance to children with SEND or mobility problems whose school is within the statutory walking distance of their home address only if the Council is satisfied that they cannot reasonably be expected to walk to school because of their mobility problems or because of associated health and safety issues related to their special educational needs and/or disability.
35. The Council's policy is contradictory and therefore it is not clear, which is fault. It is also not in line with the Education Act and statutory guidance as the general criteria such as the 'statutory walking distance' should not be considered when assessing transport needs of children who are eligible due to special educational needs and/or disability. This is also fault.
36. In addition, the Council's policy states the statutory walking distance also applies to children who use a wheelchair and other mobility aids to assist them with being mobile. However, the Education Act makes no reference to the use of mobility aids. It defines an eligible child as one with special educational needs, a disability or mobility problems who 'cannot reasonably be expected to **walk** to school'. This is fault.

Stage one review

37. The Council's Senior Officer did not award Y with transport assistance because Y did not meet the Council's general criteria to be eligible for transport. This was because Y was not attending their normal area school. However, the Senior Officer added, even if Y was attending their nearest suitable school, transport assistance would not be given to Y as the walking distance of the nearest suitable school was less than the statutory walking distance of three miles.
38. Although the stage one decision was centred around Y not attending their nearest school, it indicated the Council would apply the usual criteria such as the statutory walking distance to a child who clearly has disabilities. This was fault as it was not in line with the Education Act or statutory guidance.
39. Furthermore, the Senior Officer said as Y was in receipt of Disability Living Allowance, Mrs X should use this towards arranging school transport for Y. However, this is irrelevant as the Council's role is to consider whether Y is eligible to receive transport assistance under the Education Act. There is also no requirement for parents/carers to use Disability Living Allowance their child receives towards school transport. This was fault.

Stage two review

40. The Education Act states, “*councils must make transport arrangements for all children who have special educational needs, a disability or mobility problems who cannot reasonably be expected to walk to school*”. Y has a disability and because of this, Y cannot reasonably be expected to **walk** to school.
41. The Independent Appeal Panel said if Y was unable to walk to school or use a wheelchair, accompanied if necessary and they attended their nearest suitable school, Y would be eligible for transport assistance. The Panel then recognised Y was attending their nearest suitable school. However, the Panel said there was no evidence which concluded Y could not be pushed to school in their wheelchair.
42. It is clear the Panel accepted Y was attending their nearest suitable school as the original school, School A, was not suitable for their disability but the Panel refused to provide Y with transport assistance. As the Panel failed to take relevant information into account (Y’s disability and its judgment Y was attending the nearest suitable school), and then went on to take irrelevant information into account (that they could be pushed in a wheelchair), there was fault in the way it reached its decision. The Panel had already concluded Y was attending their nearest suitable school. Y has a disability affecting their mobility and the Panel was aware Y could not reasonably be expected to walk to school. This would make Y an ‘eligible child’ under the Education Act for free school transport.

Summary of fault

- The Council’s policy is flawed regarding children with SEN/disability/mobility issues as it does not meet the Education Act or statutory guidance.
- The original decision was flawed and not in line with the Education Act or statutory guidance
- The stage one and stage two of the appeal process were both flawed and were not in line with the Education Act or statutory guidance.

Injustice

43. I have gone on to consider, on the balance of probabilities, what would have happened if it was not for the faults I have identified above. The evidence points to the Council accepting Y was attending their nearest suitable school, School B, as School A could not meet Y’s needs as they use a wheelchair. The Council would have accepted Y could not walk the distance due to their disability and mobility problems, as it concluded Y would need to be pushed in their wheelchair. These are two clear factors for making Y an ‘eligible child’ for transport assistance.
44. Mrs X applied for transport assistance towards the end of 2021 which the Council refused. Mrs X has had to appeal the Council’s decision through its appeals process. Since the transport service stopped, Mrs X and her husband have driven Y to and from school causing them unnecessary time, trouble, and expense when Y should have received free school transport. This has also caused Mrs X and her family time and trouble appealing the Council’s decision when the evidence was already available. Furthermore, it has caused them distress and frustration, considering Y should have been given transport assistance when Mrs X applied for it.

Others affected

45. As a result of my investigation, I found the Council refused another application in the last 12 months for home to school transport, by applying the wrong criteria.

Agreed action

46. Within **one month of the final decision**, the Council has agreed it will arrange transport assistance for Y, to and from their school, School B, as an 'eligible child'.
47. Within **one month of the final decision**, the Council has also agreed it will:
 - a. apologise to Mrs X for the time and trouble she has gone through by unnecessarily appealing and complaining about the Council's decision.
 - b. apologise to Mrs X, Y and their family for the distress and frustration the matter caused them.
 - c. make a symbolic payment to Mrs X for the time and trouble and distress the matter has caused her. This payment will be £10 a day for each school day Y attended school but was not given transport assistance from the date Mrs X applied for it in December 2021.
48. Within **three months of the final decision**, the Council has agreed it will review its 'home to school transport policy' in relation to children with SEND mobility problems so it is in line with the Education Act 1996. The policy should not apply:
 - the general criteria such as the 'statutory walking distance' to children who are eligible under this category.
 - the 'statutory walking distance' to children who use a wheelchair and other mobility aids to assist them with being mobile.
49. While the Council is amending its policy to comply with the law and statutory guidance, it will provide training and guidance to its school transport staff and appeal panel, so they carefully consider any new transport applications for children with SEN/disability/mobility issues, to apply the correct criteria.
50. The Council will provide evidence to the Ombudsman it has carried out the agreed actions I have made.
51. In relation to the other applicant which the Council refused home to school transport by applying the wrong criteria, the Council has contacted them and offered a suitable remedy for the injustice it caused. The Council has agreed **within one month of the final decision**, it will provide evidence to the Ombudsman it has carried out this action.

Final decision

52. I have completed my investigation. There was evidence of fault which caused an injustice. The Council has agreed to remedy the injustice it caused.

Investigator's decision on behalf of the Ombudsman