

The Ombudsman's final decision

Summary: The Council was at fault for its handling of Mrs X's school transport application and subsequent appeal. It gave Mrs X inaccurate information, and its appeal response lacked the detail required by the statutory guidance. This caused Mrs X significant distress, uncertainty, time and trouble. The Council has agreed to apologise to Mrs X, make a payment to her and consider her application at a stage two appeal panel.

The complaint

1. Mrs X complained about the Council's delay and then refusal of her school transport application for her child, Y. She says the Council failed to consider Y's special educational needs and has since failed to respond to her request for a personal budget for Y. She wants the Council to arrange transport for Y and compensate her.

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 significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
3. 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)
4. Under our information sharing agreement, we will share this decision with the Office for Standards in Education, Children's Services and Skills (Ofsted).

How I considered this complaint

5. I considered evidence provided by Mrs X and the Council as well as relevant law, policy and guidance.
6. Mrs X and the Council have had an opportunity to comment on my draft decision. I considered any comments before making a final decision.

What I found

School transport

7. Local authorities must make 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. 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. 'Eligible children' include:
 - children living outside '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;
 - children living within walking distance of the school but who cannot walk to school because the route is unsafe; and
 - children entitled on low-income grounds. (Education Act 1996, 508B(1) and Schedule 35B)
8. A child will not normally be eligible for free travel to school on the grounds of their special educational needs, disability, or mobility problem, or on the grounds that the route is unsafe, if they would be able to walk to school if they were accompanied.
9. A child will not normally be eligible solely because their parent's work commitments or caring responsibilities mean they are unable to accompany their child themselves. Councils must consider cases where the parent says there are good reasons why they are unable to accompany their child, or make other suitable arrangements for their journey, and make a decision on the basis of the circumstances of each case.
10. Where the local authority determines that a child would be able to walk if they were accompanied, the general expectation is that the parent will accompany them or make other suitable arrangements for their journey to and from school. (Department of Education, Travel to school for children of compulsory school age statutory guidance 2024, paragraphs 49 to 54)
11. Councils need to assess eligibility on the grounds of SEND on a case-by-case basis. The statutory guidance says the council may consider the following information when deciding eligibility:
 - information provided by the parent;
 - information provided by any professionals involved in the child's care, for example, an educational psychologist or hospital consultant;
 - information provided by the child's school;
 - any relevant information in the child's EHC plan if they have one;
 - any relevant information in their individual healthcare plan if they have one.

Where council ask parents to provide information, they should avoid asking parents for information which is not already in their possession or not easy for them to obtain. (Department of Education, Travel to school for children of compulsory school age statutory guidance 2024)

12. Councils should have an appeals process in place for parents who wish to appeal about the eligibility of their child for travel support. The Council adopts the following appeals process as recommended in the statutory guidance:

- Stage 1: review by a senior officer. Within 20 working days of receiving a parent's written request to appeal the decision, a senior officer reviews the original decision and sends the parent a detailed written notification of the outcome of the review setting out the nature of the decision, how the review was conducted, what was taken into account, the rationale for the decision reached, and how to escalate their case to stage 2; and
- Stage 2: Within 40 working days of receipt of the parent's request for an independent appeal panel to consider written and verbal representations, a detailed decision is sent setting out: the nature of the decision reached; how the review was conducted; what factors were considered; the rationale for the decision reached; and information about appealing to us.

(Department of Education, Travel to school for children of compulsory school age statutory guidance 2023, Part 5)

The Council's SEND School Transport policy

13. The Council's policy says it will assess children with SEN for free school transport to the nearest qualifying school if they are unable to walk to school safely, even when accompanied by an adult.

14. The policy says the Council will consider professional reports gathered through the EHC needs assessment process to decide whether pupils meet its SEND transport criteria. It also says parents must provide evidence from external professionals to support their application.

15. Where a child with SEN can use public transport the Council will assess them using the same criteria as all other children.

What happened

16. Mrs X applied for school transport for her child, Y, in September 2023. Mrs X made clear her application was for Y's secondary school, school A, which they would attend from August 2024. She gave details of Y's Special Educational Needs and Disabilities (SEND). She said Y needed transport as they lacked road awareness and a sense of danger. School A is approximately 1.5 miles walking distance from Y's home.

17. A few days later the Council issued Y's Final Education, Health and Care (EHC) Plan. It named Y's placement as school A from August 2024 and gave more details of Y's SEND.

18. In October 2023 the Council refused Mrs X's school transport application. It said Y did not meet its distance requirements and had no mobility issues. It said it had not identified any other SEND needs that prevented Y walking to school. Mrs X appealed the decision. Mrs X chased her appeal outcome in December 2023. The Council responded two days later saying Y lived 0.1 miles from their current school. It said Mrs X would need to resubmit her application for school A in the summer term.

19. Mrs X replied the same day. She said she had been told to apply early as they needed to plan Y's transport. She said summer term would be too late to prepare Y for a new routine. The Council said it would consider the application again before the summer term. It said Mrs X did not need to resubmit the application. Mrs X replied asking the Council if it was sure she did not need to resubmit the

application. The Council confirmed it would look at the application again and Mrs X did not need to take further action.

20. In February 2024 Mrs X asked an SEN officer at the Council for an update on Y's school transport application. The officer responded saying the application was awaiting a decision. Mrs X chased the Council again in June, July and August 2024.
21. Y started at school A in September 2024. At the same time the Council asked Mrs X to make a new transport application. Mrs X replied saying she had been told she did not need to make a new application. Mrs X complained to the Council.
22. In October 2024 the Council emailed Mrs X. It said it had reviewed her appeal, and Y did not meet the distance criteria for school transport. However, it recognised Y's walking route was unsuitable and would issue a bus pass for Y and an accompanying adult. Mrs X responded saying Y's SEN meant a bus was unsuitable as they could not handle busy places and had no sense of danger. She said there were no responsible adults to accompany Y.
23. The Council responded to Mrs X's complaint the next day. It accepted it had mishandled Y's application, and it had given Mrs X wrong advice. It said it had now offered Y a bus pass and signposted Mrs X to the Ombudsman. Mrs X responded to the complaint immediately, and repeated the bus was unsuitable. She asked about a personal budget for Y's transport. Mrs X then complained to the Ombudsman.
24. In response to our enquiries the Council repeated that Y did not meet its distance criteria and it had issued a bus pass. It said it had considered Y's EHC Plan and said when assessing a safe walking route, it assumed pupils were accompanied by a responsible adult so an adult could accompany Y on the bus. The Council added Mrs X had not responded to its stage one appeal, so it did not escalate the issue to a stage two panel. It also said it had received no request for a personal transport budget.

My findings

Mrs X's application

25. The Council accepted it mishandled Mrs X's school transport application. It told Mrs X it would decide her application before the summer term and Mrs X did not need to resubmit the application. It failed to reconsider the application, forcing Mrs X to repeatedly chase the Council between February and September 2024. The Council then told Mrs X she would have to make a new application. This was fault and caused Mrs X significant time and trouble, uncertainty and distress.
26. When Mrs X questioned making a new application the Council considered her request as a stage one appeal. This was fault. Mrs X did not ask for an appeal as she had not yet received a decision to appeal. The fault by the Council meant it did not give Mrs X an opportunity to set out her grounds for appeal in writing. It caused Mrs X further uncertainty over how the Council had considered her application.
27. As the Council said its response was a stage one appeal, I have considered whether it was compliant with the statutory guidance. Paragraph 12 sets out the detail needed of a stage one appeal response. While the Council's response said Y did not meet its distance criteria, it failed to explain how it had carried out the review, what information it had considered and the rationale for its decision. In particular, there was no reference to how the Council had considered Y's SEND, the information used to form their EHC Plan or Mrs X's reasons for not being able

to accompany Y. This was fault. The Council also failed to provide details of how Mrs X could escalate her appeal to stage two, and it is unclear whether the appeal was considered by a senior officer. This was also fault. The Council's appeal response was inadequate and caused Mrs X further distress and uncertainty over whether Y would receive school transport.

28. Despite not signposting Mrs X to a stage two appeal, Mrs X did respond to the stage one appeal setting out why she was unhappy with the decision. In response to our enquiries the Council said Mrs X did not ask for a stage two appeal. It is clear Mrs X remained unhappy with the Council's decision. The Council failed to treat this response as a request for a stage two appeal. This was fault, denying Mrs X her appeal rights and causing her further distress and uncertainty.
29. The Council also says it did not receive a request for a personal transport budget from Mrs X. Mrs X's reply to the Council's complaint response clearly contained a request for a personal transport budget. As with Mrs X's appeal response, the Council again failed to consider this. This was fault, causing further uncertainty.
30. For twelve months the Council repeatedly gave Mrs X inaccurate information, failed to properly consider her emails and failed to follow the proper appeals process. It remains unclear what information the Council considered when making its decision. The Council's responses to Mrs X lacked the detail, reasoning and formality needed when considering school transport applications and appeals.
31. We identified similar failings in a decision we issued in June 2024. The Council agreed to remind relevant officers of the requirements of its appeal process. Based on the evidence in this case, the Council has yet to resolve the reasons behind its repeated failings.

The Council's SEN Transport policy

32. The Council's policy says parents must provide information from external professionals to support their application. Paragraph 11 sets out examples of the information councils may consider when assessing eligibility on the grounds of SEND. The statutory guidance acknowledges councils will need to ask parents to provide some or all the information needed to make a decision but places no obligation on parents to do this. The Council's policy appears incompatible with the statutory guidance. This is fault causing distress and with the potential to cause similar injustice to others in future if not rectified.

Action

33. Within one month of the final decision the Council has agreed to:
 - a) Apologise to Mrs X for the significant uncertainty, distress, time and trouble caused by the failings identified in this decision. We publish [guidance on remedies](#) which sets out our expectations for how organisations should apologise effectively to remedy injustice. The organisation should consider this guidance in making the apology.
 - b) Pay Mrs X £500 to recognise the impact of the failings identified in this decision.
 - c) Consider Mrs X's application for school transport at a stage two independent appeal panel. The Council should ensure it follows the statutory guidance when considering Mrs X's appeal.
 - d) Consider Mrs X's application for a personal transport budget.
34. Within three months of the final decision the Council has agreed to:

- a) Review its SEND school transport policy and procedures to ensure they comply with the statutory guidance.
- b) Present a copy of this decision and the outcome of its review to its Children, young people and education scrutiny commission.

35. The Council should provide us with evidence it has complied with the above actions.

Decision

36. I find fault causing injustice which the Council has agreed to remedy.

Investigator's decision on behalf of the Ombudsman