

The Ombudsman's final decision

Summary: The complainant says the Council is at fault in its decision to refuse her son free school transport. The Ombudsman has found some evidence of fault in how the Council made its decision. He recommended the Council carry out a new review of Ms X's request and amend its review policy so that it follows statutory guidance. The Council agreed and for this reason the Ombudsman has ended his consideration of this complaint.

The complaint

1. The complainant, who I will call Ms X, says the Council is at fault in its decision to refuse her son free transport to his school.

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*)
4. If we are satisfied with a council'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

5. As part of my investigation I considered the complaint and information provided by Ms X. I made enquiries of the Council and I considered its response, its school transport policy and the relevant statutory guidance. I set out my initial view on the complaint in a draft decision statement and I considered Ms X's and the Council's comments in response.

What I found

Relevant guidance and policy

Home to school travel and transport guidance, statutory guidance for local authorities

6. This statutory guidance explains to local authorities how they should carry out their duties in respect of home to school travel and transport. It states that local authorities have discretionary powers that allow them to go beyond their statutory duties and provide transport for children who are not entitled to free transport.
7. The guidance sets out how local authorities should consider a request for a review of their decision on providing school transport.
8. A Stage One review should be carried out by a senior officer who should send a detailed letter explaining the decision reached, how the review was conducted and the rationale for the decision.
9. If unresolved at Stage One, a Stage two review can be requested. This should be carried out by an independent panel whose members were not involved in the case previously. The panel can receive both written and oral representations from the officers and parents involved. As above, the panel's decision should be in writing and explain what matters were considered and the rationale for the decision.

Surrey County Council Home to School Transport Policy for 4-16 year olds, 2018/19

10. This policy explains how the Council will determine if a child is eligible for free home to school transport. It says:
 - The Council will normally only provide free home to school transport to the child's nearest qualifying school.
 - If a parent could have applied for a school place at a nearer school that had vacancies but chose not to, their child will not normally be eligible for free home to school transport
 - The Council will consider the safety of the walking route when assessing transport eligibility.
 - If a child is not eligible for free home to school transport then a concessionary seat on existing school transport can be purchased, if one is available.
 - Review requests of the Council's decision not to provide transport will not normally take account of a parent's work commitments.
 - If after the first review a parent remains unhappy, a second review will be carried out by a panel of three County Council Members.

Background

11. Ms X and her son, Y, have lived in their current home since he was born.
12. In 2016 Ms X applied for a secondary school place for Y. Information on the Council's website explained that parents should carefully research the schools they apply for to see if their child would be eligible for free school transport to their preferred school.

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13. Ms X successfully requested a place for Y at School Z which is not the nearest school to her home. If she had applied to the nearest school, a place for Y would have been available.
 14. When Y started at School Z in September 2017, Ms X took him to school herself.
 15. However, Ms X's circumstances changed and owing to work commitments she could no longer take Y to school. She applied for free home to school transport as she considered it unsafe for him to walk to school; large parts of the journey are on busy roads with no footpaths. Ms X also explained there are no public bus services to get Y to school on time.
 16. The Council refused Ms X's application. It said its school transport policy only allows it to provide school transport to pupils attending their nearest qualifying school. As School Z was not Y's nearest qualifying school, it could not provide him with transport. It told Ms X she could apply for a concessionary seat on a school contract bus for £168.50 per term.
 17. Ms X was unhappy with the Council's decision and requested a review on the grounds that it had not followed its school transport policy. She said the Council's decision was wrong because:
 - The difference between the distances to School Z and to the nearest qualifying school is only 0.3 miles.
 - A bus contracted by the Council picks up other pupils from where she lives and takes them to School Z even though this cannot be their nearest qualifying school.
 18. The review was considered by the Senior Admissions and Transport Officer who upheld the Council's original decision. The decision was conveyed to Ms X in a letter which explained that, as Y does not attend his nearest qualifying school, he is not eligible for free school transport under the Council's policy. The letter said this was the case even though the difference in distance between Y's nearest qualifying school and School Z was only slight.
 19. Ms X was unhappy with the decision and requested her case be reviewed by the Council's review panel. She thought it was wrong that the Council would pay for transport to Y's nearest qualifying school but not provide him with transport to his current school.
 20. Ms X was not given the opportunity to present her case to the panel.
 21. The panel of three elected members who had not been involved in her case previously upheld the Council's decision. It said:
 - The Council had properly applied its policy when considering the case. Y is not eligible for free school transport as he does not attend his nearest qualifying school.
 - Y would have been allocated a place at his nearest qualifying school if Ms X had applied for one in 2016.
 - Concerns regarding the lack of local bus service and the safety of the route were noted but these did not mitigate the fact that Ms X chose to send Y to School Z despite knowing of these difficulties.
 - Ms X had been offered a concessionary place on a school coach but she did not provide any reasons why she could not fund the cost of the concessionary fare.

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- It could not comment on why other pupils living near Y did receive free school transport to School Z. It said each case was considered on its merits and there might be social and medical reasons for the provision.
22. Ms X remains unhappy and contacted us for assistance. She says she was unaware of the nearest qualifying school when she applied for Y's secondary school place.

Analysis

23. It is not for us to substitute our judgement for that of the Council. Instead we examine the process leading to the Council's decisions for evidence of fault.
24. In its correspondence to Ms X explaining the outcome of her request and her Stage One review, the Council explained it can only provide free transport to the nearest qualifying school. However, the Council has discretionary powers to provide transport for pupils who are not entitled to free transport. Neither letter addresses Ms X's concerns about the safety of her son walking to school or the lack of public transport. As these factors have not been addressed, I am not convinced the Council has properly considered if there were grounds to exercise discretion and provide transport in this case.
25. I note the review panel's decision refers to the outcome of the Stage One review and uses this as the basis of its decision. As I have found fault with the consideration given at Stage One, I consider this also calls into question the conclusions reached by the panel.
26. Furthermore, the statutory guidance says parents should be able to attend a second stage review hearing to present their case. The Council says its policy is not to invite parents to address the panel and accordingly Ms X was not invited to do so. I consider the Council's policy does not comply with the statutory guidance and Ms X was wrongly denied the opportunity to put her case to panel members.
27. For the above reasons, I consider there has been fault in how the Council has considered Ms X's request for free transport and her subsequent review requests. As I have found fault in the process by which it was made, I consider there are grounds to question the robustness of the decision made by the Council.

Agreed action

28. To address the fault identified above, I recommended the Council reconsider Ms X's request having regard to the arguments she put forward including her concerns about the safety of the route and public transport issues. If necessary, the outcome of that reconsideration should then be considered by the panel to see if their decision alters. Ms X should also be invited to present her case to the panel. The Council agreed.
29. I also recommended the Council amends its Home to School Transport policy so it complies with the statutory guidance and allows parents to present their case to the panel orally. The Council has agreed to do so.

Final decision

30. I have ended my investigation of this complaint because the Council agreed to act on my recommendations.

Investigator's final decision on behalf of the Ombudsman