

Report by the Local Government and Social Care Ombudsman

Investigation into a complaint against Surrey County Council (reference number: 19 016 358)

4 November 2020

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mrs X	The complainant
Y	Her son

Report summary

School Transport

Mrs X complains the Council failed to tell her she had to apply for post 16 transport for her son, Y, causing her financial loss and Y to miss the start of school.

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Finding

We find the Council at fault in its handling of Y's post 16 school transport arrangements causing Mrs X and Y injustice and we have made recommendations.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

In addition to the requirements set out above the Council has agreed to carry out the following actions within three months of the date of this report.

- Provide Mrs X with a written apology.
- Pay Mrs X £2,400 to reimburse taxi costs.
- Pay Mrs X £150 for distress and uncertainty.
- Pay Mrs X £100 for time and trouble.
- Write to the family of any young person with Special Educational Needs and Disability (SEND) who was receiving travel assistance before a move into further education from September 2018 up to and including September 2019. The letter should refer to this public report and invite families to make a retrospective application for transport if necessary. If a decision is/has since been reached that the Council should provide travel assistance, it should reimburse any transport costs incurred by the families upon satisfactory evidence.
- Take action to ensure the Council tells parents of children in Year 11 with an Education, Health and Care Plan (EHCP) to apply for post 16 transport going forward and, inform us of the action taken to achieve this.

The complaint

1. Mrs X complains the Council failed to tell her she had to apply for post 16 transport for her son, Y. She says Y previously received school transport under his Education, Health and Care Plan (EHCP). Mrs X says she incurred taxi costs of £2,400 while awaiting the Council's transport provision and Y missed the start of school.

Legal and administrative background

The Ombudsman's role

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we 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. We 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 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*)
4. The law says we cannot normally investigate a complaint unless we are satisfied the council knows about the complaint and has had an opportunity to investigate and reply. However, we may decide to investigate if we consider it would be unreasonable to notify the council of the complaint and give it an opportunity to investigate and reply. (*Local Government Act 1974, section 26(5)*)
5. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this report with Ofsted.

The Council's Post 16 Transport Policy Statement 2019-20

6. The Council published a policy statement for 2019-20 with information about the schemes and support available for school and college transport for learners aged 16 to 19. This refers to the Council's Travel Assistance Policy for Children and Young People with an EHCP or SSEN: 0-25 years. (SSEN refers to a Statement of Special Educational Needs.)
7. Section 8 of the Transport Policy Statement sets out how to apply for transport support as follows.
 - Apply online at the link provided for the Student Fare Card scheme.
 - Download the application form at the link provided for home to school/college transport.
 - For those with SEND (Special Educational Needs and Disability), contact the SEND caseworker. Appropriate transport will be identified within the EHCP, at some point during the final transition year.
8. The Council's Post 16 Transport Policy statement 2020-21 no longer says those with SEND should contact their SEND caseworker, but instead says they should apply for home to school/college transport.

The Council's Travel Assistance Policy for Children and Young People with an EHCP or SEN: 0-25 years (September 2019)

9. The Council published a Travel Assistance Policy for 2019 which says it came into effect in September 2018. This says, for those continuing in education and training post 16:
 - where there is a current entitlement to travel assistance, this will continue until, the end of the academic year in which the young person turns 16; and
 - where a pupil who has previously been assessed as eligible for travel assistance remains at the school named in their EHCP beyond their 16th birthday, the Council will ordinarily continue to arrange their transport until the end of the academic year in which they turn 19. However, current entitlement does not indicate future entitlement, and pupils in Year 11 staying on in education will need to reapply for travel assistance yearly. Where a young person changes school/college after 16, they will also need to reapply for travel assistance each year.

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How we considered this complaint

10. We have produced this report after examining relevant documents and speaking to the complainant.
11. We gave the complainant and the Council a confidential draft of this report and invited their comments. We considered the comments received before we finalised the report.

What we found

What happened

12. Mrs X's son, Y, attended a special school for children with autism. Mrs X says she did not apply for home to school transport for Y at any time, rather a SEND caseworker arranged this. The Council provided a taxi to take Y to and from home to school.
13. The Council has provided a copy of Y's EHCP issued in 2018. We note this does not refer to school transport.
14. Y was due to move from Year 11 on to post 16 education from September 2019. Mrs X says the Council agreed Y could continue at the same school for sixth form and it would continue to provide free transport.
15. The Council held Y's EHCP Annual Review meeting in January 2019. Of relevance to this case, the meeting minutes say:
 - Y's existing provision includes additional local educational authority support: transport to and from school; and
 - recommendations for the coming year include "daily transport to and from school to continue".
16. In response to enquiries the Council acknowledged it referred to transport at the Annual Review but did not provide details on the practical steps the family should take to apply. However, it had been the Council's policy since 2018 that families had to reapply for transport once their child got to the end of Year 11.

17. Mrs X says she was unaware of the Council's policy or any need to apply, as she had not done so in the past and the Council did not make her aware of this. The SEND caseworker had previously arranged transport without any input from her.
18. Y was due to start school on 5 September 2019.
19. On 4 September Y's usual taxi company told Mrs X the Council had cancelled its service. Mrs X immediately contacted the Council and applied for school transport assistance.
20. On 5 September Mrs X emailed the Council asking it to process her application urgently. She said it had not told her she had to apply for travel assistance; a taxi from home to school was part of Y's EHCP and Y was now missing school.
21. The Council responded to say it could not prioritise her application. It was sorry she was not told to reapply, but parents had to reapply at each key stage.
22. Mrs X told the Council she was at a disadvantage due to its failure to tell her to reapply and asked how long the process would take.
23. The Council warned it could take some weeks to process her application and then 10 days to arrange transport after approval. Therefore, she should make other arrangements for the foreseeable future.
24. In response to enquiries the Council explained it received Mrs X's application for travel assistance on 4 September and processed this by 23 September, within three weeks. It can take a further 10 days to put in place travel arrangements and it provided transport from 2 October 2019.
25. Mrs X made a formal complaint to the Council, received by the Council on 15 September. In summary she said:
 - the Council cancelled Y's transport without notice;
 - the taxi company rather than the Council told her the day before Y was due to start school;
 - at Y's Annual Review the Council agreed transport would continue;
 - the Council did not tell her she had to apply for transport;
 - it is not possible for her or her husband to take Y to school; and
 - Y will miss school until transport can be arranged.
26. The Council responded on 14 October. In summary it said:
 - the SEND transport policy makes clear transport will continue until the year in which the child turns 16;
 - due to the number of children moving to post 16 education and the policy indicating parents need to reapply, it does not separately tell parents to reapply; and
 - it has referred her concerns about the information provided during the Annual Review to another team.
27. Mrs X complained further on 14 October. In summary she said:
 - she had not applied for transport in the past; the SEND caseworker arranged this. So, she was unaware of any policy to apply for transport;
 - the Council should not have responded to her before hearing from the SEND team.

- her family has incurred significant financial loss, time and stress due to having to arrange and fund transport themselves; and
 - her son also suffered upheaval due to missing the first few days of school.
28. The Council provided a stage 2 response on 16 December. It explained it was up to parents to apply for school transport and so it did not agree it was at fault. However, it accepted it should be more proactive in communications with parents. The Council would recommend SEND case officers remind parents of the requirements of the Transport Policy, for example, during transition through education 'stages', in future. It told Mrs X to contact us if she remained unhappy.
29. Mrs X told us she paid £120 a day for a taxi for Y, while awaiting the Council to decide her application and arrange transport. In total she paid £2,400, using the same taxi company the Council would usually book. Mrs X also provided a copy of an invoice from the taxi company evidencing this.
30. In response to enquiries, the Council said it wrote to post 16 students who were already receiving transport in 2018/19 and needed to know to reapply for 2019/20. However, it did not write to the families of children in Year 11 because, under its policy, these families would have to reapply in any event. This was not a change of policy for 2019 and it had been the case since 2018 that families had to reapply once their child reached the end of Year 11.
31. The Council accepted it could have made the process clearer for Mr and Mrs X. It apologised and offered to reimburse them £2,400 for the taxi costs and pay £150 as a goodwill gesture. It also explained it would review the operational procedure of how the SEND Transport Policy can be shared to facilitate awareness and inform families of their obligations.

Conclusions

32. It is reasonable to expect the Council to discuss school transport arrangements as part of transition planning for post 16 education under the EHCP review process. The Council's Transport Policy statement in effect at the time also told parents this would happen. And, during Y's EHCP review meeting, it was recommended, "daily transport to and from school to continue", giving Mrs X the impression school transport would continue as before. However, despite this policy and practice, the Council did not go on to confirm Y's school transport arrangements with Mrs X during the EHCP review process. This is fault.
33. Because of the Council's fault, Mrs X found out Y had no transport in place just one day prior to his starting school. This would have caused a great deal of distress and uncertainty to them both and it caused Y to miss the first few days of school. Further, Mrs X then had to pay for transport while awaiting the Council's arrangements, at significant cost. We recommend the Council remedy this personal injustice.
34. Having reviewed the complaint correspondence exchanged, we find the Council's stage 1 response missed the point Mrs X was making that she was unaware of any need to apply for transport. And the Council delayed providing its stage 2 response. This amounts to fault putting Mrs X to avoidable time and trouble in the complaints process. We recommend the Council remedy this further personal injustice.
35. The Council says families have had to reapply for school transport at the end of year 11 since 2018, however it has not explained how it made families aware of

this and its Transport Policy Statement 2019-20 contradicts this. Further and in any event, it is likely that parents whose children have an EHCP did not previously have to apply for transport and so would not be aware to review any relevant policies or apply unless the Council told them. We are therefore concerned other families may have suffered injustice and we recommend the Council take action to remedy this.

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36. In response to our draft report the Council explains the Travel Assistance Policy for 2019 was an updated version of its 2018 policy. And, although the 2018 policy indicated parents had to reapply at the end of Year 11; this did not happen in practice before 2019. Instead students at the same placement had their transport continued, or the SEND caseworker would take it forward if the young person was changing school or college. This changed in 2019, when the requirement for a parent/carer to apply for transport at the end of Year 11 was enacted and put into effect. As a result, the Council considers it extremely unlikely that young people moving into further education in September 2018 would have been impacted by the issues highlighted in the draft report.
 37. It acknowledges it did not tell Mrs X personally of the need to reapply for transport however there were general communications to parents. It issued a SEND newsletter in February 2019 which told parents they must apply for travel assistance if their child was starting a new key stage (Reception, Year 3, 7 or 12). It also provided information on its Local Offer website.
 38. The Council says in July 2020 it sent a reminder letter directly to parents of children in Year 11 in receipt of SEND travel assistance to say they had to reapply if their child was continuing in education. It therefore suggests any injustice is limited to those families with children moving onto further education in September 2019 only.
 39. The Council confirms it has already taken action to ensure parents know to apply for post 16 transport going forward, as recommended in the draft report. It says information is available on the main Council and Local Offer websites and a letter is now also sent directly to parents/carers of those in Year 11 receiving travel assistance. In addition, the nature of its communications with families around home to school/college transport, particularly for those with an EHCP, will form part of its review of the whole process. As always, it will reflect on the findings of the investigation to help inform ongoing improvement work.
 40. Having reviewed the Council's comments, we are concerned there was a discrepancy between policy and practice prior to 2019. This would likely have caused more confusion for parents. And, although the Council says it did not require parents to reapply for transport despite its policy saying they should, we do not know if this was the case. We therefore remain concerned that families may have suffered injustice since 2018.
 41. We have reviewed the newsletter issued by the Council in February 2019. We do not know how many parents had access to the newsletter. Further, we do not consider a short paragraph in the middle of a six page newsletter would have provided adequate publicity of the new arrangements. We are unable to review what was available online at the time. We therefore remain concerned that other families may have suffered injustice due to a lack of clear information on the Council's policies.
 42. We have reviewed the reminder letter issued by the Council to parents in July 2020. In light of this we are satisfied those families were told to reapply for

transport. If they have had any difficulties they may have cause to complain. However, it is not necessary for the Council to now write to those families informing them how to apply. We have therefore amended our recommendation so the Council no longer needs to contact those parents.

- 43. We welcome the actions already taken by the Council to prevent recurrence, including its commitment to contact parents/carers directly by letter, as it did in July 2020. We also welcome the Council's willingness to reflect on our findings to inform future improvements.

Recommendations

- 44. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
- 45. In addition to the requirements set out above the Council has agreed to carry out the following actions within three months of the date of this report.
 - Provide Mrs X with a written apology.
 - Pay Mrs X £2,400 to reimburse taxi costs.
 - Pay Mrs X £150 for distress and uncertainty.
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 - Write to the family of any young person with SEND who was receiving travel assistance before a move into further education from September 2018 up to and including September 2019. The letter should refer to this public report and invite families to make a retrospective application for transport if necessary. If a decision is/has since been reached that the Council should provide travel assistance, it should reimburse any transport costs incurred by the families upon satisfactory evidence.
 - Take action to ensure the Council tells parents of children in Year 11 with an EHCP to apply for post 16 transport going forward and, inform us of the action taken to achieve this.
- 46. The Council has accepted our recommendations to remedy the complaint.

Decision

- 47. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mrs X and Y and may have caused injustice to others. The Council should take the actions identified in paragraphs 44 and 45 to remedy that injustice.

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