

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint about
Staffordshire County Council
(reference number: 20 010 985)**

17 August 2021

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 J	The complainant
K	Her daughter

Report summary

Education

Mrs J complained the Council refused to fund travel costs for her daughter K, to attend school. A Tribunal had decided attendance at that school was not unreasonable public expenditure. And there is no viable public transport route to the school. This means Mrs J has had to arrange her own transport to get K to school.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, we recommend that, within three months of the date of this report, the Council:

- apologise to Mrs J and K for the faults identified;
- pay Mrs J £300 to acknowledge the uncertainty and the resulting upset caused to K and her family by the flawed decision-making process; and
- reconsider K's appeal having regard to the issues outlined as fault in this report.

If the Council decides K is eligible for help with transport, it should backdate eligibility to the start of the Autumn 2020 term. The Council can deduct the costs the family would have incurred as part of their contribution to the transport costs, as set out in its post-16 transport statement.

Within three months of the date of this report, we also recommend the Council take the following action.

- Provide us with evidence that relevant staff, appeal decision-makers and panel members have received information about the lessons learned from this case, regarding taking account of travel time.
- Audit a sample of 20% of transport applications for the 2020/21 school year for post-16 students who have applied on special educational needs (SEN) or other disability grounds where the Council has refused transport, where it previously provided it. The Council should check it has made a proper assessment in line with the statutory guidance and its own transport statement. It should check whether decision-makers have considered the time it took applicants to attend school. It should consider where there is evidence of a journey taking more than 75 minutes. If there is, it should follow the principles set out in this report.
- Following the audit, if the Council finds cases in the sample where the decision was flawed, it should then review all the post-16 students who have applied for transport on SEN or other disability grounds and the Council has refused it but previously provided it for the 2020/21 school year.

We welcome that the Council has accepted our recommendations.

The complaint

1. Mrs J complained the Council has refused to fund travel costs for K to attend school. A Tribunal had decided attendance at that school was not unreasonable public expenditure. And there is no viable public transport route to the school. This means Mrs J has had to arrange her own transport to get K to school.

Legal and administrative background

The Ombudsman's role and powers

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. 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 decision with Ofsted.

The law and guidance about post-16 school transport

5. For children attending school between the ages five and 16, the rules about transport provision specify some groups of children, with special educational needs (SEN), for whom councils *must* provide free transport.
6. Councils do not have a duty to provide free transport, in the same way, to young people of sixth form age in education or training. This means students aged 16 to 18. However, councils must publish an annual transport policy statement setting out the arrangements for the provision of transport that they consider necessary, to help students of sixth form age to attend education or training. Arrangements for young people with learning difficulties or disabilities must be explicitly set out in the policy.
7. In considering what arrangements it is necessary to make for sixth form pupils, councils must have regard to:
 - the needs of those for whom it would not be reasonably practicable to attend an education establishment if no arrangements were made; and
 - the distances, and journey times, between the homes of people of sixth form age and education establishments suitable to their needs.
8. The Education Act says, in considering if it is necessary to make arrangements, a council should consider the nature of the route which the individual could reasonably be expected to take. (*Education Act 1996, section 509AB*)
9. The statutory guidance '*Post-16 transport to education and training*' says councils must take account of various factors.
 - The needs of those who could not access education or training if no arrangements were made – they should consider the needs of the most vulnerable or socially excluded and young people with learning difficulties and disabilities.

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- The distance and journey time of the place of learning from the home. Councils can use the statutory walking distance for children of compulsory school age as a benchmark (up to 75 minutes each way is usually considered reasonable for that age group). As with children of compulsory school age, young people should be able to reach their place of learning without undue stress.
 - The cost of the transport to the place of learning and of any alternative way of ensuring attendance there – councils should target help on those who need it most, particularly families on a low income.
 - Councils may ask parents for a contribution towards transport costs, but should exercise discretion in doing so, and have arrangements to support low income families.
10. There are rules specific for young people who have an Education, Health and Care (EHC) Plan. But there is no *automatic* entitlement to transport, for sixth form age students, to an institution named in an EHC Plan.

The Council’s Post-16 transport statement 2020-21

11. The Council’s statement says:
- “We support those beginning a course aged between 16 to 19 who are low income, and those with an Education, Health and Care Plan (EHCP) who require specialist travel assistance due to a learning difficulty or disability, through the Staffordshire Post 16 travel assistance scheme...”*
12. Regarding students with special educational needs or a disability, the Council’s statement says it will offer support (after a financial contribution from the parents) if:
- “The student is unable to walk or use public transport (even when accompanied) due to their learning difficulty or disability; and*
- The student is attending the nearest suitable school, college or Local Authority funded training provider offering the course as specified by the Local Authority and named in the Education, Health and Care plan, regardless of the distance to travel.”*
- “Support will be offered to low income students for a contribution of £494, or to non-low income students for a contribution of £625.”*
- “Staffordshire County Council may be able to provide travel assistance through the offer of a personal travel budget. Under this scheme the student will be responsible for making their own travel arrangements.”*
13. For young adults who start a new course, aged between 19 and 25, the Council’s *Post-16 transport statement 2020-21* lists other conditions. These include whether family members could transport the student and whether this would be reasonable.

How we considered this complaint

14. We produced this report after:
- considering Mrs J’s complaint and the documents she provided;
 - making enquiries of the Council and considering its response; and
 - considering our Focus Report, ‘[All on Board?](#)’ which highlights some of the common failings seen in school transport provision.

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15. In deciding to issue a public report on this complaint, and in making wider recommendations for service improvements, we have considered previously upheld Ombudsman decisions about post-16 school transport against Staffordshire County Council.
 16. We sent a draft report to Mrs J and the Council and invited comments. Mrs J and the Council accepted the draft report's findings.

What we found

Background

17. Since 2010, the Council has recognised that K has special educational needs. Most recently, the Council has met those needs through an EHC Plan. In 2017 K was assessed and diagnosed with an autism spectrum disorder. By 2019 K was in the process of moving to a new school, which was around 25 miles from her home. This school was named in her EHC Plan.
18. Mrs J had appealed a Council decision on a change to K's EHC Plan. In June 2019 a Tribunal decided, among other things, that K's transport budget, to the new school, was not unreasonable public expenditure. After the Tribunal, the Council finalised K's EHC Plan.
19. The Council paid Mrs J the transport costs as a personal budget.

The events we have investigated

20. K was due to move to post-16 education in September 2020, at the same school as she had been attending. On 28 April 2020 the Council sent a letter to parents, including Mrs J, about post-16 transport. The letter advised there was no legal guarantee to free travel assistance for post-16 students.
21. On 21 May Mrs J wrote to the Council, responding to the Council's 28 April letter. She noted it was less than a year from the June 2019 Tribunal, that had decided K's travel budget was not unreasonable public expenditure. She noted the round trip to K's school was over 50 miles, with no direct bus. And that K would not go on public transport, because of her autism. The Council did not respond to that letter.
22. Later in the year, Mrs J instructed a solicitor, who wrote to the Council with a letter before action. This was about another education related matter and the transport provision. The solicitor advised their view was the Council's Post-16 transport statement was unlawful. The Council's response advised it did not agree with the solicitor's assertion. But in August it advised the solicitor it would consider K's eligibility for post-16 transport based on the facts set out in Mrs J's 21 May letter.
23. On 14 August, the Council wrote to Mrs J with its decision that K did not qualify for travel assistance. It advised this was because it needed:

"...evidence that a young person cannot walk or travel on public transport, even if accompanied, as a measure of the extent their SEND affects them and not the availability of local routes. Distance does not form part of the criteria."
24. K started her sixth form studies in September. Mrs J advises that she has driven K to school, because of the distance and the lack of public transport routes.
25. Mrs J asked the Council to review its decision. The Council did not change its view, including after Mrs J supplied further information. At the end of September and early October the Council emailed Mrs J. It advised:

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- *“Students with a learning difficulty or disability can often use public transport to make the journey to school or college when accompanied. If that is the case we would not offer post 16 travel assistance. Work or childcare commitments are not generally considered a reason to not arrange such accompaniment...”*;
 - it did not believe an exception to its policy was applicable.
26. In November 2020 Mrs J emailed the Council again, setting out the route to the college. She set out how the journey by public transport would take from approximately 0730 to 0930; two hours. She noted *“...an escort would spend all day travelling to and from [the school] in order to support [K] to and from school.”*
27. The Council offered Mrs J the chance to attend an appeal, but she declined. In January 2021 the Council wrote to Mrs J with its response to her appeal:
- “Where the information presented evidences that the young person could travel on public transport if accompanied, there is no requirement that there will be direct buses or other public transport available from the home address to school. The measure is only whether the young person would be able to make the journey even if accompanied.”*

It decided K was not entitled to travel assistance.

28. The appeal panel minutes note issues it took into account. These included:
- *“Mum hasn’t provided information as to why she cannot transport [K] to College”*;
 - *“Distance is not classed as exceptional circumstance”*;
 - *“Inability [quoted exactly from the original text] of a bus is not an exceptional circumstance”*;
 - *“Applied policy correctly, deemed child not entitled, then parent should make suitable arrangements to transport.”*

The Council’s response to our enquiries

29. Mrs J complained to us. In response to our enquiries, the Council advised:
- “The Council considers that we have no evidence available that demonstrates that [K] would not be able to make a journey by public transport if she were supported by a nominated adult. Also no evidence has been provided that explains how such a journey may affect her and/or what strategies or approaches have previously been used to support her during times that she travels within the local community, and what the outcome has been.”*

Conclusions

30. Part of Mrs J’s complaint is the Council was ignoring the findings of a Tribunal that had decided the Council should fund K’s travel to school. But in the months after the Tribunal, K moved to post-16 education. The rules on school transport change for post-16 education. That meant the Tribunal’s decision was no longer relevant – the rules it based its decision on were different. So we cannot uphold that part of Mrs J’s complaint.
31. The Council’s policy says it will offer travel support if a student *“...is unable to walk or use public transport (even when accompanied) due to their learning difficulty or disability”* and they are attending a school named in the Education, Health and Care Plan, *“regardless of the distance to travel”*. It does not list other

considerations for 16-18 year olds (but does for young people starting a course after this age).

32. K is attending the school named in her EHC Plan. So that school is the correct one for the Council to decide if it is necessary for it to arrange transport to.
33. Mrs J gave the Council information that the journey to K's school by public transport was excessively long at two hours each way. We have checked and agree it would take K significantly longer than the benchmark journey time of 75 minutes, recommended in the statutory guidance.
34. The Council's view is the actual journey is irrelevant. But the statutory guidance says young people of sixth form age should be able to "*reach their place of education without incurring stress, strain, or difficulty so that they would be unable to benefit from the education offered*". The examples in the guidance include a young person having to make several changes of public transport which results in an unreasonably long journey time.
35. So the length of the public transport journey for K is longer than the benchmark suggested in the statutory guidance. This is irrespective of how K's disability affects her ability to use public transport. Mrs J says K cannot use public transport. The Council says it has not seen any evidence of strategies Mrs J and K have used to support her. But to support K, Mrs J would need a viable route to use. Consequently, the Council's decision was flawed. It was not in accordance with the statutory guidance on journey time, with no cogent reasons why the Council departed from this.

Did the fault cause an injustice?

36. We do not decide whether the Council must provide transport assistance for K. We investigate whether the Council considered the application and appeal correctly. We cannot question the merits of a decision taken properly by the Council. However, as we have found fault in the Council's consideration of the application (and appeal), it brings the decision into question.
37. Mrs J and K were left with uncertainty about whether the Council's decision might have been different had the Council's panel considered how the journey time exceeded the guidance.

Wider issues

38. In August 2020 we issued our most recent upheld decision about post-16 transport against Staffordshire County Council. We have upheld other complaints against the Council about this issue in recent years. Some of the faults found in those decisions are similar to faults we have found in this investigation and include:
 - not considering individual circumstances; and
 - making decisions that are not consistent with its own policy when read with the statutory guidance.

Recommendations

39. 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*)

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40. In addition to the requirements set out above, the Council has agreed, within three months of the date of this report, to:
- apologise to Mrs J and K for the faults identified above;
 - pay Mrs J £300 to acknowledge the uncertainty and the resulting upset caused to K and her family by the flawed decision-making process; and
 - reconsider K's appeal having regard to the issues outlined as fault in this report.
41. If the Council decides K is eligible for help with transport, it should backdate eligibility to the start of the Autumn 2020 term. The Council can deduct the costs the family would have incurred as part of their contribution to the transport costs, as set out in its post-16 transport statement.
42. Within three months of the date of this report, the Council has agreed to take the following action.
- Provide us with evidence that relevant staff, appeal decision-makers and panel members have received information about the lessons learned from this case, regarding taking account of travel time.
 - Audit a sample of 20% of transport applications for the 2020/21 school year for post-16 students who have applied on SEN or other disability grounds where the Council has refused transport, where it previously provided it. The Council should check it has made a proper assessment in line with the statutory guidance and its own transport statement. It should check whether decision-makers have considered the time it took applicants to attend school. It should consider where there is evidence of a journey taking more than 75 minutes. If there is, it should follow the principles set out in this report.
 - Following the audit, if the Council finds cases in the sample where the decision was flawed, it should then review all the post-16 students who have applied for transport on SEN or other disability grounds and the Council has refused it but previously provided it for the 2020/21 school year.

We welcome that the Council has accepted our recommendations.

Final decision

43. We uphold the complaint. The Council has agreed to our recommendations, so we have completed our investigation.