

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

**Investigation into a complaint against
Coventry City Council
(reference number: 19 008 896)**

10 August 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

Mr B The complainant

Report summary

School transport

Mr B complains that the Council refused his application for home to school transport for his daughter.

Finding

Fault found causing injustice and recommendations made.

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:

- Apologise to Mr B;
- change its school transport appeal procedure to ensure it meets the requirements of statutory guidance; and
- offer Mr B a fresh appeal with a new panel, including the opportunity to attend the panel meeting and make verbal representations.

The Council has carried out our recommendations to remedy the complaint.

The complaint

2. The complainant, whom we shall refer to as Mr B, complains that the Council has refused his application for home to school transport for his daughter.

Legal and administrative background

The Ombudsman's role

3. 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*)
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 report with Ofsted.

The Education Act 1996

5. The Education Act 1996 says councils must provide free home to school transport for eligible children of statutory school age to qualifying schools.
6. Eligible children are children of compulsory school age who:
 - cannot walk to school because of their special educational needs, disability or a mobility problem; or
 - live beyond the statutory walking distance; or
 - receive free school meals, or whose parents receive the maximum Working Tax Credit.
7. The nearest qualifying school is the nearest school with places available that provides education suitable to the age, ability and aptitude of the child, and any special educational needs the child may have.

Government guidance

8. The Government issued statutory guidance in 2014, 'Home-to-school travel and transport statutory guidance' ('the guidance') which recommends councils have a two stage appeal process for parents who wish to challenge a decision about their child's eligibility for travel support:
 - Stage 1: review by a senior officer;
 - Stage 2: review by an independent appeal panel.
9. The guidance says a parent can challenge a decision on the home to school travel application on the basis of entitlement, distance measurement, route safety and consideration of exceptional circumstances. The parent can challenge the officer's decision and request a review by an appeal panel.
10. The guidance says the independent appeal panel should consider "written and verbal representations from both the parent and officers involved in the case". Appeal panel members must be independent of the original decision-making process but do not have to be independent of the council.

-
11. The guidance says, “Previous guidance made clear that local authorities should have in place and publish their appeals procedures but left it to the individual authority to determine how this should operate in practice. We are now recommending that local authorities adopt the appeals process set out below... The intention is to ensure a consistent approach across all local authorities, and to provide a completely impartial second stage, for those cases that are not resolved at the first stage”.

How we considered this complaint

12. We produced this report after examining relevant documents and considering comments from Mr B and the Council.
13. We gave Mr B and the Council a confidential draft of this report and invited their comments on it. The comments received were taken into account before the report was finalised.

Findings

Key facts

14. Mr B applied for home to school transport for his daughter to attend secondary school. The Council refused his application. Mr B appealed. The appeal was considered by an officer at stage 1 and then by an independent panel at stage 2. The panel decided not to overturn the decision to refuse a free travel pass. In reaching its decision the panel considered documents including Mr B’s application and appeal, the original decision, the Council’s home to school travel policy and the guidance. Mr B was not invited to attend the panel meeting.

Analysis

15. The guidance recommends local authorities adopt a two-stage appeal process with stage 1 being a review by a senior officer and stage 2 being a review by an independent appeal panel.
16. The Council has a two-stage appeal process with a senior officer as the decision maker for stage 1 and an independent appeal panel for stage 2. At both stages written information is required from parents and officers involved in the case. The procedure states, “the panel will review the case to see if the policy has been correctly applied and if all the evidence has been properly considered and will issue a final decision letter”. It does not allow parents the opportunity to attend the hearing and make verbal representations.
17. The Council’s process does not meet the requirements set out in the guidance which states the independent appeal panel should consider written *and verbal* representations from both the parent and officers involved in the case.
18. The guidance says parents should be able to present their case and there are good reasons for this including: transparency; natural justice and the opportunity for all parties to ask questions.
19. The status of the guidance is a material consideration. It is statutory guidance, not simply an explanatory document or informal advice. So, it has a significant status and councils have a duty to have regard to it when formulating their policy. It is open to councils to depart from statutory guidance, but the courts have said they can do so only if they have cogent reasons for doing so.

-
20. We would expect the Council to follow statutory guidance unless it has good reason not to. Any departure from the guidance should give parents at least the same opportunities to present their case.
- Did the Council have cogent reasons to depart from the guidance?**
21. In 2017 the Council carried out a public consultation with a view to amending its school transport assistance policy which included the implementation of an amended appeal process. The Council says that, in formulating the new process, it took account of the recommendations in the guidance. It says the guidance sets out a series of recommendations rather than requirements and refers to the statement that, “as with the whole appeals process, the timings are recommended and not compulsory”.
22. The Council says its process enables stage 2 appeals to be decided within a significantly shorter timeframe than that recommended by the guidance. The paper appeal process is time and resource efficient and avoids the possibility of additional delays arising from panel, officer or parent non-availability. It says this process makes the best use of its limited resources as well as ensuring it offers just, equitable and timely consideration of applications and appeals.
23. The Council’s expressed reasons for adopting its process are about speed and resources. Cost-savings are not, in themselves, an adequate reason to depart from statutory guidance. Whilst the speed of decision-making might be a desirable factor, that is not a valid or acceptable reason to remove an important right of representation for the public in an appeal process, particularly one where the Government has the explicit desire to create a “completely impartial second stage”.
24. It is also important to note the Government’s expressed intent in formulating the current guidance in the way it did. It specifically signalled an intent to move away from the broad discretion that councils previously enjoyed in relation to appeals and to provide clear guidance to promote a “consistent approach”.
25. The Cabinet report from March 2017 outlined the consultation process and feedback received and attached a copy of the proposed travel assistance policy including the revised appeal process. However, there is no reference to the proposed changes to the appeal process in the report. The minutes of the Cabinet meeting at which the report was considered show the Cabinet considered the report and approved the revised education travel assistance policy but make no mention of the changes to the appeals process.
26. The Council has not therefore provided any evidence to demonstrate there has been a balancing exercise to weigh the loss of the public’s right to make verbal representations against the perceived gains in efficiency.
27. There is a statement on the Council’s website which states “in 2017 the local authority introduced a new travel policy for Statutory School Age pupils and a new Post 16 Travel Statement. These were introduced as Coventry has undertaken a review of long-standing policies to ensure they meet the latest DfE and government guidance”. Yet it has adopted a policy that explicitly departs from that guidance in relation to appeal rights and has provided no cogent reasons for doing so. This was fault.

Does the Council's process give parents the same or equal opportunity to present their case?

28. Under the Council's process, parents are denied the opportunity to make verbal representations as envisaged in the guidance. There is nothing in the information provided by the Council to indicate this deficit has been addressed or mitigated. In fact, it appears to have been sacrificed to speed up the process and save money. This omission could clearly cause an injustice to some parents who might not be able to articulate their case as clearly in writing as they might in verbal evidence to the panel.

Conclusions

29. The Council was at fault because its appeal process does not comply with statutory guidance and it has not provided any cogent reasons for departing from that guidance. As a result, Mr B was denied the opportunity to attend the panel hearing and make verbal representations for the panel to consider.
30. The Council's fault caused Mr B significant injustice because he has suffered the uncertainty of not knowing whether his verbal arguments could have made a difference to the outcome of his appeal. It also has the potential to cause injustice to other parents.

Recommendations

31. 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*)
32. In addition to the requirements set out above, the Council has agreed to:
- Apologise to Mr B;
 - change its school transport appeal procedure to ensure it meets the requirements of statutory guidance; and
 - offer Mr B a fresh appeal with a new panel, including the opportunity to attend the panel meeting and make verbal representations.
33. The Council has accepted our findings and carried out our recommendations to remedy the injustice caused to Mr B. We welcome this, but consider a public report should be issued to ensure any other council whose appeal process does not meet the requirements of statutory guidance is put on notice of the need to review its procedures to ensure they either: provide at least the same opportunity for parents to present their case; or cogent reasons for departing from the guidance.

Decision

34. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mr B. The Council has agreed to take the action identified in paragraph 32 to remedy that injustice.