

## **The Ombudsman's final decision**

Summary: Mr X complained about the Council's decision not to award home to school travel assistance for his child. He said the Council's decision is unfair and caused him unnecessary stress and anxiety. We found fault in the Council's actions. The Council has agreed to consider a new appeal for Mr X and to review its school transport policy.

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## **The complaint**

1. Mr X complains about the Council's decision not to award home to school travel assistance for one of his children. He says the Council's decision is unfair and has caused him unnecessary stress and anxiety.
2. Mr X would like the Council to provide his child with free travel assistance.

## **The Ombudsman's role and powers**

3. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. 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. I have discussed the complaint with Mr X and considered the information he has provided.
6. I have made enquiries to the Council and considered the information it provided.
7. Mr X and the Council had the opportunity to provide their comments on a draft of this decision. I have considered their comments before making a final decision.

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## What I found

### Summary of relevant guidance

8. The Department for Education statutory guidance for home to school transport sets out councils' duties. Councils must have regard for this when carrying out duties in relation to home to school transport and travel.
9. The relevant legislation is contained within sections 508 and 509 of The Education Act 1996.
10. Section 508B of the Act places a duty on Councils to make travel arrangements they consider necessary to facilitate attendance for eligible children. Schedule 35B of the Act defines eligible children.
11. The guidance recommends Councils have a two-stage appeal process for parents who wish to challenge a decision about their child's eligibility for travel support. The two-stage process consists of:
  - Stage 1: review by a senior officer;
  - Stage 2: review by an independent appeal panel.
12. The guidance says that following the Stage 1 review, the officer should send the parent a detailed written notification of the outcome, setting out:
  - The nature of the decision reached;
  - How the review was conducted;
  - Information about other departments and/or agencies consulted as part of the process;
  - What factors were considered;
  - The rationale for the decision reached, and
  - Information about how the parent can escalate their case to stage two (if appropriate).
13. The guidance says that at stage 2, an independent appeal panel should consider written and verbal representations from both the parent and officers involved in the case. The panel should then provide the parent with a detailed written notification of the outcome.

### The Council's home to mainstream school transport policy

14. The Council's policy says it must provide free transport to and from school if a child is:
  - under eight years old and has to walk more than two miles to the nearest qualifying school; or
  - aged eight or over and has to walk more than 3 miles to the nearest qualifying school.
15. The policy says the nearest qualifying school is usually:
  - the school which is the closest to home, measured by the shortest walking or road route
  - the school where there is a place available or where a place could have been offered at the allocation stage of school admissions had it been requested

*(Section 4c, Lancashire County Council Home to Mainstream School Transport Policy 2019/20)*

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16. The policy says parents who receive the maximum amount of Working Tax Credit or whose child is entitled to free school meals are defined as being on a low income. It says where the children of low-income families attend secondary school, it will *“provide free transport to one of the three nearest schools as long as the school is between two and six miles from your home”*. (Section 6b, Lancashire County Council Home to Mainstream School Transport Policy 2019/20)
  17. The policy says applicants who feel the Council has applied the law incorrectly or consider they have exceptional circumstances which have not previously been provided to the Council may submit a written appeal. The appeals process is in two stages.
  18. The Council has produced a flowchart to show how the appeals process works. The stages of the appeals process are as follows:
    - Officer A declines the home to school transport application
    - Parent/carer challenges the decision
    - Stage 1 review by a senior officer (Officer B) who sends a decision letter to the parent/carer with detailed reasoning for the decision made. The letter also provides notification of the option to escalate the appeal to stage 2 (an appeal panel)
    - Parent/carer challenges the Stage 1 decision
    - Stage 2 review by an appeal panel. An independent panel considers written representation from the parent/carer
    - The independent panel sends details of its decision to the parent/carer

### **Background**

19. Mr X has two children. His eldest child, Child Y attended a secondary school, School D. Mr X says Child Y experienced several issues while attending School D which had a negative impact on them. As a result of these issues, Mr X did not want Child Y to continue to attend School D. He changed the secondary school setting for Child Y so that they attended a different school, School E.
20. Child Y receives travel assistance from the Council for travel to and from School E.
21. Mr X’s younger child, Child Z was due to transfer to a secondary school setting in September 2020. Child Z obtained a placement at School E.

### **Mr X’s application**

22. Mr X applied to the Council for travel assistance for Child Z for their placement at School E.
23. On 28 July 2020, the Council told Mr X it had not approved his application. It said the reason for this was because there was a nearer suitable school (School F) with places available when Mr X was seeking a place for Child Z.
24. Mr X was unhappy with the decision and emailed the Council on 3 August 2020. He said the Council granted his eldest child, Child Y a school bus pass and they attended the same school as Child Z. He said there was therefore no logic in declining Child Z’s application. Mr X also said he would not send Child Z to School D or School F. He said Child Y had experienced numerous issues at School D and he did not want the same to happen to Child Z.
25. Mr X also submitted an appeal form against the Council’s decision on 3 August 2020. He appealed on financial grounds as he was on a low income, and on

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- educational continuity grounds. Mr X provided a letter as supporting information to accompany the appeal, giving details of the issues faced by Child Y at School D.
26. On 11 August 2020, the Council carried out its Stage 1 review.
  27. The Council sent Mr X an email on 12 August 2020 to say it had sent him a separate email via its secure email system. The Council asked Mr X to download its response to his appeal.
  28. Mr X emailed the Council on 13 August 2020 to say he could not access the Council's secure email. He asked the Council to send its response by post.
  29. On the same day, the Council agreed to send Mr X a "schedule". It said if Mr X disagreed with anything within the schedule, he could provide his reasons why and the Student Support Appeals Committee (SSAC) would see them.
  30. Mr X confirmed receipt of the schedule on the same day. He said he considered the difference in distance between his home and School E and his home and School F to be "not worth arguing over". He also maintained that he would not send Child Z to School D or School F.
  31. The Council's SSAC reviewed Mr X's appeal on 1 September 2020.
  32. On 9 September 2020, Mr X called the Council to ask for its decision letter. He said he had additional information which he considered would have been helpful for the SSAC to see. He said he had been unable to obtain this information beforehand because of COVID-19 restrictions. The Council says it agreed Mr X could provide the additional information once he had received it and it would then go ahead with a re-appeal.
  33. The Council sent its decision letter to Mr X on 11 September 2020. It said it had not allowed the appeal because Child Z was not attending their nearest school, School F.
  34. It said the reason Child Y had been given travel assistance was because in previous years, including the year Child Y transferred to secondary school, School F was oversubscribed and could not therefore be considered as a suitable school. However, when Child Z transferred to secondary school, School F had fewer applicants and Child Z could have been offered a placement at the nearer school.
  35. The Council said Mr X's application was not granted on financial grounds because there were three closer schools which could have offered Child Z a placement. These included School D and School F. The Council said it considered Mr X's choice of school for Child Z was parental preference and his reasons for appeal did not merit the committee exercising its discretion to award travel assistance.
  36. In October 2020, Mr X provided the Council with additional information relating to his income. The Council told Mr X it would consider his appeal again on 9 November 2020.
  37. The SSAC reviewed Mr X's appeal again on 9 November 2020 and sent its decision letter on 19 November 2020. It said the committee had sympathy with all the points raised by Mr X, but it had not allowed the appeal because the reasons put forward did not merit the SSAC exercising its discretion.
  38. Mr X remained unhappy with the Council's decision and brought his complaint to us.

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### **Analysis – was there fault by the Council?**

39. It is not the Ombudsman’s role to decide whether someone should receive free transport to school. We can only consider if there was fault in how the Council reached its decision.
40. The statutory guidance says councils should issue a decision letter to the parent after the Stage 1 review. The Council’s policy says the same. The Council has not provided a copy of its Stage 1 decision letter, but instead, has provided a copy of the “schedule” which was sent to Mr X on 12 August 2020.
41. Although the schedule provides the reasons why the Council declined the appeal, it does not explain how the Council considered Mr X’s concerns about the suitability of School D as an option for Child Z. This was one of the grounds for appeal put forward by Mr X.
42. I acknowledge the Council may consider School D to be a qualifying school and may consider Mr X’s choice of school to be parental preference. I also acknowledge the Council says in its Stage 2 decision letters that the committee noted the evidence provided by Mr X. However, the evidence provided by the Council does not contain detailed written notification of how the review of Mr X’s concerns was conducted and does not show how these factors were considered. Neither does it provide “detailed reasoning” to explain why the SSAC considered Mr X’s concerns did not merit the Council to exercise its discretion.
43. The schedule provided to Mr X and the Stage 2 decision letters issued on 11 September 2020 and 19 November 2020 do not provide this explanation either. The decision letters simply say the committee gave careful consideration to all the information provided, but they do not explain what consideration was given. This explanation was a requirement of both the statutory guidance and the Council’s appeals policy, and the lack of a detailed explanation for how the Council reached its decision is fault.

### **The Council’s appeals policy**

44. The statutory 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.
45. The Council has a two-stage appeal process with a senior officer as a decision maker for Stage 1 and an independent appeal panel for Stage 2. At both stages, written representation is required from parents and officers involved in the case. But the Council does not allow parents the opportunity to attend the appeal committee hearing and make verbal representations.
46. As stated at paragraph 13 of this statement, the statutory guidance says the independent appeal panel should consider written *and verbal* representations from both the parent and officers involved in the case.
47. The Council says the SSAC is not open to the press and public and it does not invite appellants to attend in person. It says it is the full Council’s decision how to conduct certain committees, including conducting meetings in private where officers of the Council and the committee share personal and confidential information. It says appellants are advised they are required to submit information to evidence their points of the appeal to the committee and that the appeals are conducted in this format.
48. The Council says the SSAC has always conducted the committee in this format as decided by the full Council, as is its remit to do so. It says this is to ensure

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everyone has the same opportunity to submit written information and evidence to support the appeal.

49. The guidance says parents should be able to present their case in writing and verbally, and there are good reasons for this including: transparency; natural justice and opportunity for all parties to ask questions. The guidance is statutory, 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.
50. 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.
51. I acknowledge the comments made by the Council regarding its current policy. However, I do not consider the Council's explanation for departing from the guidance, (because the Council can decide how to conduct certain committees and because it has always conducted the appeals hearing in this way) is a cogent reason.
52. This is because under the current process, parents who may not be able to articulate their case as clearly in writing as they might in verbal evidence are denied the opportunity to make verbal representations as envisaged in the guidance. I have seen no information from the Council to indicate it has addressed or mitigated this deficit. I consider the Council's appeal process is therefore not in line with the statutory guidance and I have found this to be fault.
53. The fault identified caused an injustice to Mr X as he was denied the opportunity to make verbal representations to the appeal panel, and was left confused and unsure as to how the Council had considered his grounds for appeal relating to the suitability of School D for Child Z.

### **Agreed action**

54. To address the injustice identified, the Council has agreed to take the following action within one month of the final decision:
  - Provide an apology to Mr X.
55. The Council has agreed to take the additional following action within three months of the final decision:
  - Offer Mr X a new appeal with a new panel and the opportunity to make verbal representations;
  - Initiate a review of its school transport appeal procedure to ensure it meets the requirements of the statutory guidance,
  - Introduce a pilot scheme to offer appellants with similar cases the opportunity to provide verbal representations to the panel.
56. The Council has agreed to provide its amended school transport policy within 12 months of the final decision, taking into account its impact on resources, training, consultation and Cabinet approval.

### **Final decision**

57. I have found fault by the Council and the Council has agreed to take the above action. I have therefore concluded my investigation.

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**Investigator's decision on behalf of the Ombudsman**