

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to: AUDIT COMMITTEE

Report of: The Chief Executive and the Director, Education and Skills

Date of Meeting: 18 June 2019

Subject: Ombudsman Report concerning a complaint about Post 19 Education Transport

Wards Affected: All

1. Purpose of Report

- a) In December 2006, the Audit Committee endorsed a framework for informing and involving Members of the Council when the Local Government and Social Care Ombudsman issues a report.
- b) The aim of this report is to inform members about the Ombudsman's report, issued in April 2019, concerning a complaint from Ms X about how the Council assessed her son's eligibility for Post 19 transport funding assistance.
- c) As the Ombudsman has found that there was maladministration and injustice, it should be considered by this Committee on behalf of the City Council.

2. Recommendations

That the Audit Committee approves the Director's proposed response to the Local Government and Social Care Ombudsman's recommendations.

3. Background Information

- 3.1 A copy of the Local Government and Social Care Ombudsman's report of April 2019 is appended to this report. All Ombudsman reports are anonymous, so, whilst the events described are real, the names of those involved are not included.
- 3.2 The essence of the complaint is the allegation that the Council:
- Did not properly consider the application Ms X made for transport support for her son, Mr X, who is autistic and has an EHC Plan. He is unable to access public transport. Initially it told her that it did not provide Post 19 Transport.
 - Took many months to consider the application.
 - When finally accepting that Mr X should be given assistance, only provided it from the date of the decision rather than the date of the application.

4. The Key Events

- 4.1 Ms X attempted to make an application on behalf of her son on 26 March 2017. The Council did not advise her how to make an application and did not appear to consider the circumstances outlined by her in her application.
- 4.2 It was refused and Ms X was told that the Council did not provide transport for adults. When she queried this, she was told that it was only provided in exceptional circumstances, so she needed to arrange transport for her son.
- 4.3 It took time to obtain confirmation of the refusal to assist and Ms X chased for it, finally receiving it on 14 July 2017. The letter mentioned that there were special circumstances when the Council might assist and asked a number of questions.
- 4.4 Ms X replied on 28 July explaining her own circumstances and that her son would not be able to access education without a successful application for funding for transport.
- 4.5 Ms X chased frequently for a response, but only finally received a decision on 11 September 2017, at 20.58pm. This was the night before the new term started. Ms X was advised that her appeal was unsuccessful but no reasons were given. It did say that she could seek a review.
- 4.6 On 13 September, Ms X asked for clarification of the reason why she was unsuccessful so that she could appeal. No reply was given and she appealed on 18 September.

- 4.7 Despite asking frequently for updates, nothing was received, even though Ms X advised the Council that their inaction was causing her son unnecessary suffering to his mental health and wellbeing.
- 4.8 A complaint was made by the CAB on 12 December 2017.
- 4.9 On 16 February 2018, the Council advised Ms X that it would provide funding for the rest of the year, but it took until 9 May for a backdate of her costs from 12 September 2017 to be agreed.
- 4.10 Ms X also complained to the Council about the provision of a guide on journeys and was advised that an updated risk assessment was required before a guide could be provided. This would determine whether a male guide was necessary. A shortage of guides meant that the Council offered her the options of either providing a car to take her and her son to and from college, so she was acting as guide, or that he could travel alone if an updated risk assessment said he could.
- 4.11 It took from February until May 2018 to progress this and it had not been possible to provide a guide by July 2018.

5. The Ombudsman's Findings - Maladministration and Injustice

- 5.1 The Ombudsman found that the Council had made it difficult for Ms X to apply for transport funding, even telling her that it did not provide funding for post-19 education.
- 5.2 It did not direct her towards the draft policy it was operating so she did not know what information to provide and how the Council applied its discretion.
- 5.3 It took 111 days for the Council to respond to her application and the Ombudsman found this delay was unacceptable, given that the draft policy says that applications will be processed as quickly as possible.
- 5.4 The Ombudsman found fault in that the Council did not explain how to make an application or how to appeal against an adverse decision.
- 5.5 When Ms X sought a review of the decision, the Council handled it poorly, asking for information she had already sent and taking 45 days to refuse her appeal. It failed to give reasons for the refusal. The Ombudsman found fault in this.
- 5.6 The Council had been informed that this situation was causing the family financial hardship and Ms X had told them that she was physically and mentally exhausted by trying to keep working while taking her son to and from College every day, but it still took far longer than was reasonable to make a decision about the appeal.

- 5.7 The Ombudsman found that the draft policy did not follow the law in that it says someone must not only need assistance but have exceptional circumstances.
- 5.8 The lack of record keeping about how decisions were reached meant that it was not possible to tell how the Council viewed Mr X. That meant that there was no information about whether the Council had followed the right test in law. The Ombudsman found the Council to be at fault in this.
- 5.9 The Ombudsman also found fault in that the Council asked Ms X irrelevant questions - such as her own financial situation. He found that the Council had put the responsibility for transporting her son on Ms X when it has a statutory duty to provide post 19 transport if it considers it necessary to do so.
- 5.10 Fault was also found in how the Council had handled the issue of provision of a guide. The Ombudsman considered that, knowing what the Council knew, it should have conducted a new risk assessment.
- 5.11 The Ombudsman found fault in that, although a carer's assessment had been carried out by Adult Social Care, it did not take into account the impact of taking her son to College.

6. The Ombudsman's Recommendations

- 6.1 The Ombudsman recommended that the Council should write to Mr and Ms X to apologise for the distress and anxiety its actions had caused them.
- 6.2 It should also pay compensation of £2100 to Ms X and £1500 to Mr X for the maladministration and injustice caused to them for the way it had handled the post-19 transport process.
- 6.2 The Council should also implement the findings of its consultation on transport policy, ensure that applicants are clearly signposted towards the revised policy, keep proper records of its decisions and communicate the reasons for their decisions clearly and promptly.
- 6.3 The Ombudsman found that all the transitional cases, such as Mr X's, should be reviewed by the Council and any retrospective applications should be considered and the decision recorded. The Council must report the results of this to the Ombudsman.
- 6.4 The Council should also review its policy and procedure about the provision of guides so that risk assessments are conducted in a timely fashion.
- 6.5 The Council should review its policy and procedure in relation to carer's assessments to ensure that staff are alert to the need for support.

7. The Council's View

- 7.1 The Council accepted the Ombudsman's recommendations at the draft report stage.
- 7.2 The Council has made the payments requested by the Ombudsman and apologised to Mr and Ms X.
- 7.3 Cabinet has recently approved a new 0-25 policy for transport assistance to educational provision. This includes Post 19. The Ombudsman recognised and welcomed the introduction of a new policy by the Council.
- 7.4 The new policy was subject to comprehensive consultation and provided the Council with an opportunity to discuss not only the policy itself but also matters related to practice. This included how the policy was communicated to parents and young adults; how we can improve the clarity of the application process and how easy the process is to navigate. Subsequently, the Council has committed to working with parents to change the application forms for transport assistance and to introduce a new application process for Post 19. The website pages relating to transport support will be changed to make them easier to understand and case studies will be provided to help give parents a better understanding of the different types of transport support available.
- 7.5 The decision making process for Post 19 applications is being changed. In the future, under the new policy, decisions will be made by an Independent Panel of professionals, including colleagues from Health, Safeguarding and Education, to ensure that the decision making process is transparent and consistent. Applicants will be able to attend Stage 2 Panel meetings to present their case. A new Quality Assurance Framework is also being introduced, which will include random 'deep dives' of decisions to ensure that the new process is working well. This framework will also ensure that decisions are communicated clearly and in a timely manner to applicants.
- 7.6 All transitional cases are being reviewed. This exercise is almost complete. We are required to report back to the Ombudsman about this exercise by 28 June 2019 at the latest.
- 7.7 With regard to the provision of Guides, in such new cases in the future, a new risk assessment will be undertaken to assess whether the requirements of the individual requesting transport has changed. In this case, there was some confusion about whether a male guide was still required (as had been the case previously). A new risk assessment, undertaken in a timely manner, would have addressed this issue.

- 7.8 This case has highlighted the need for improved communication between Children's and Adult's teams, where a parent may need a carer's assessment. Staff in Travel Assist have been informed that in such cases, they should ask the parent/guardian whether they would like/do not have a carer's assessment, and make the necessary referral to the Adult's Directorate as required.

8. Legal and Resource Implications

The agreed payments have been made from an appropriate budget.

9. Risk Management & Equality Impact Assessment Issues

The main risk would be that the service does not learn from this case and there are further cases where families have not been supported through the process of applying for transport assistance in the proper manner. The new arrangements put in place, following Cabinet approval of the new policy, should mitigate this risk.

A new Equality Impact Assessment was undertaken as part of the consultation on the new policy and submission to cabinet.

10. Compliance Issues

City Council policies are being strengthened since this complaint was made.

11. Recommendations

That the Audit Committee approves the actions being taken in response to the Local Government and Social Care Ombudsman's report.

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