

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to: AUDIT COMMITTEE

Report of: Assistant Director of Inclusion and Special Educational Needs and Disability

Date of Meeting: 26 July 2021

Subject: Ombudsman Report concerning a complaint about the Home to School Transport department

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 on 7 May 2021, the Council's handling and consideration of applications and subsequent appeals for home to school transport.
- c) As the Ombudsman has found fault causing injustice and have made recommendations to remedy the injustice caused, it should be considered by this Committee on behalf of the City Council.

2. Recommendations

That the Audit Committee notes the Assistant Director of Inclusion and Special Educational Needs and Disability 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 dated 7 May 2021 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:

- As the circumstances of Mrs C and Mrs G complaints are similar in nature the investigator has produced a report covering both complaints.
- Mrs C and Mrs G complained about the Council's handling and consideration of their applications and subsequent appeals for home to school transport for their children.
- There was fault by the Council which caused an injustice to Mrs C, Mrs G and their children.
- The LGSCO are concerned that the very similar faults which occurred in both these cases mean it is possible other families have been similarly affected. Other parents and carers may have also incurred costs to access the home to school transport their children are entitled to.
- In this case the reason(s) for issuing a report are concerns about significant injustice due to the number of people potentially affected by the faults we have identified, the issue of home to school transport which remains a topical issue in our investigations, and concerns about wider problems with home to school transport decisions made by the Council.

4. The Key Events

4.1 Mrs C's case

At the time of the events complained about Mrs C's daughter, D, was seven. She has a diagnosis of autistic spectrum disorder. She has an education, health and care plan which names a special school three miles from her home.

D began attending the school in September 2018. The family were living in temporary accommodation near to the school and a relative supported Mrs C to transport D to school. In February 2019, the family moved back to their own home, further from the school and without the support of the relative with transport.

Mrs C applied for home to school transport for D in March 2019. She said she did not have a car and her home was three miles away from the school. Mrs C said D could be challenging and refuse to walk. She said there was no direct bus route to the school and she could not afford the travel costs to bring D herself. Mrs C said D found public transport difficult, had no awareness of danger and had run into roads.

The Council assessed Mrs C's application in April. It decided to offer D a bus pass or cash equivalent but did not record on the assessment form the reason for its decision. It checked if the family were on a low income. The Council noted it issued the family with bus passes in November and December 2018 while they were living in temporary accommodation.

Mrs C appealed the Council's decision in May. She said D's learning disability was severe and her behaviour extremely challenging. The quickest route proposed by the Council required changing buses at the busiest time of day. Mrs C said D used a special needs pushchair and space on the bus would be limited which would make D more distressed. She said D could hurt herself and hit and bite others when she becomes upset. She asked the Council to provide D with a taxi or minibus to school.

An officer reviewed the stage one appeal. The officer acknowledged Mrs C's description of D's challenging behaviour but noted, "Travel Assist rarely receive reports regarding students attending [School] that suggest their students are unable to travel on vehicles with other passengers." The officer also noted the Council had given D a bus pass when she lived in temporary accommodation and as the pass was not returned, the officer assumed it had been used. The officer decided D could travel on public transport and dismissed the appeal.

In its letter to Mrs C about the outcome of the appeal, the Council said the extra information provided by Mrs C did not warrant a change in the original decision. It told her how to raise her appeal to the next stage.

In June, Mrs C asked for her appeal to be considered at stage two. She reiterated her previous concerns about D using public transport and said D's school was supporting the appeal. She said the Council had not provided a detailed explanation for why D could not access specialised transport to and from school.

The sub-committee considered Mrs C's second stage appeal in August. It did not tell Mrs C the date of the appeal. The sub-committee noted Mrs C had not provided supporting evidence for D's challenging behaviour.

The Council wrote to Mrs C and said it did not uphold her appeal. It said the family had not returned the bus passes issued to them in November 2018, therefore the sub-committee assumed they had been travelling on public transport. It also said it thought the journey to school was reasonable. The Council said there was no evidence D could not use public transport. It did not direct Mrs C to the LGSCO.

In September 2019, a clinical psychologist provided a supporting letter for D to access home to school transport. The letter said D needed full supervision and support with her every day needs and was mostly non-verbal. It stated D could be aggressive towards others and did not use public buses due to health and safety concerns.

In January 2020, D's school wrote a letter which was given to the Council providing evidence in support of Mrs C's request for home to school transport. The letter said D:

- had no awareness of personal danger;
- would not be able to travel to school by public transport or walk between home and bus stops;
- was non-verbal, placed inappropriate items from the environment in her mouth, and injured herself;
- became distressed and could behave unpredictably;
- would not be able to access crowded spaces such as a public bus; and
- had similar needs to "numerous other children" who attended the school and received specialist transport.

In March 2020, a different clinical psychologist discussed D's case with the Council and wrote in support of the request for home to school transport. She said D's presentation meant travel to school by public transport would be too high a risk. D's parents were struggling to use strategies to manage her behaviour because they were exhausted from her frequent challenging behaviour "throughout the day and the night whilst out of school due to a lack of transport provision".

In April 2020, the Council overturned its decision and granted D a space on a minibus with a passenger assistant to take her to school. The Council says this was in response to the information from the psychologist.

Mrs C said before this she had been transporting D to school herself by taxi. She says there were times she could not afford the taxi and D had to miss school. D's attendance for 2018-19 was 69% and her attendance before schools closed because of the COVID-19 pandemic in 2019-2020, was 52%.

4.2 **Mrs G's case**

Mrs G has a teenage son, H, and several other children with additional needs. H has learning difficulties and physical health problems. He has an education, health and care plan which names a special school. The school is over three miles from his home.

Mrs G applied to the Council for home to school transport in March 2019. In her application she listed her reasons for asking for assistance and explained the difficulties H would have on public transport. Mrs G told the Council H was at high risk when using public transport. She said he had no social skills, needed constant supervision, could be impolite or rude to others and could become physical by throwing items or pinching people.

Mrs G went on to list the reasons neither she nor her husband would be able to go with H on his journey to school. Mrs G said she had competing priorities because she had to take her other children to various schools in the area and

several had additional or complex needs. Mrs G also said she had her own physical and mental health difficulties.

The Council replied to Mrs G in mid-March and confirmed H was an eligible child and had been granted home to school transport. The letter explained, “we have agreed your child can be provided with a free travel pass to use on public transport...Travel Assist expects either a parent or guardian to accompany their child on the journey to and from school.”

Mrs G disagreed with H being offered a bus pass and said neither she nor her husband could go with him on his home to school journey. Mrs G appealed the Council’s decision and asked it to consider her appeal at stage one. She included further details of H’s medical issues, her own mental and physical health difficulties, and her husband’s recent surgery which prevented him accompanying H.

The Council refused Mrs G’s stage one appeal. The decision letter said, “the additional information you provided did not warrant a change in the original decision following the initial assessment of the Transport Application Form.”

Mrs G was unhappy with the decision and asked the Council to consider her appeal at stage two.

In support of her appeal, Mrs G sent a letter from H’s paediatrician who supported her application for home to school transport. The letter said, “[H] can easily wander off as he has very little understanding in view of his difficulties.” Mrs G also explained that H suffered from anxiety, had no awareness of danger and could become anxious in crowds. She said H was taking sleeping medication and would have to catch three buses to arrive at school which she said would leave him confused.

In mid-May 2019, the sub-committee considered Mrs G’s appeal. Under the Council’s policy at the time, Mrs G was not invited to give verbal evidence before the sub-committee.

The Council wrote to Mrs G explaining its decision. It said the sub-committee decided Mrs G’s particular circumstances “did not justify a departure from the general policy as there was no exceptional circumstances.” The Council listed the reasons for refusal as:

- H had been awarded a bus pass or equivalent and there were no exceptional circumstances to explain why he could not use public transport accompanied by one of his parents. The sub-committee noted Mrs G’s medical issues; and
- two of Mrs G’s younger children should be able to travel alone despite having moderate special educational needs and the three other children attended a school very close to where they lived.

The letter said the sub-committee's decision was final with no right of appeal. The letter did not explain that Mrs G could approach the LGSCO.

In September 2019, Mrs G contacted the Council to explain she was struggling with her health and asked if she could put in another application for home to school transport. The Council told Mrs G not to complete a new application form. It said she could send supporting evidence and it might consider it at a sub-committee hearing. Mrs G says she sent supporting evidence of her family's difficulties and provided medical documentation for her husband and H's sibling. She also sent information about a college course she attended which she believed changed her circumstances.

The Council wrote to Mrs G in November 2019. It said there was "no decision on the stage two appeal" and it would tell her when it had an outcome.

Mrs G says she emailed the Council many times for an update but only received an automated response. Mrs G says she had not received a response from the Council up to the point she complained to us in February 2020.

5. The Ombudsman's Findings - Fault found causing injustice

5.1 The Council's decision to provide home to school transport

Both children were eligible for home to school transport because they lived more than the statutory walking distance from their nearest suitable school. The issue of accompaniment only applies in cases where a child lives within statutory walking distance and has a special educational need, disability or mobility problem, or the walking route is unsafe. There is no expectation in the guidance for a parent to accompany a child who is entitled to home to school transport because they live further than the statutory walking distance. The Council expected Mrs C and Mrs G to accompany their children to school, and this was fault.

In both cases, the Council did not adequately record its reasons for offering a bus pass when Mrs C and Mrs G applied for home to school transport. There is no evidence of how it considered travelling by public transport was "safe and reasonably stress free" for D and H or that it considered whether either child could travel on public transport unaccompanied. This was fault. If the Council believed the children needed accompaniment, it should have considered another type of transport as set out in its home to school transport policy, such as escorted public transport or a transport vehicle to assist them on their journey to and from school. Not doing so was fault.

For Mrs C and Mrs G to use the home to school transport offered to their children they would have had to incur additional costs buying their own ticket to accompany the children on public transport. The Council says it did not consider issuing a bus pass or equivalent to either parent. In both cases, the families incurred costs transporting their children to school either by taxi or using their own car. This was fault.

5.2 Appeals

In both cases, the Council's response to the stage one appeal does not explain what it considered when making its decisions, nor the reasons for its decisions. In Mrs C's case, the Council's records show it based its decision in part on the behaviour of other children and did not show how it considered D's individual needs. In Mrs G's case, it did not explain how it considered H's needs or the medical evidence she provided. There is no evidence the Council asked for further information from Mrs C or Mrs G about D or H's difficulties using public transport, or consulted with caseworkers or other professionals involved with the children. This was fault.

The Council did not invite Mrs C or Mrs G to the stage two appeals. The policy in place then did not allow parents to attend stage two panels to make oral or written representations. This did not follow the statutory guidance and was fault.

In both cases, the minutes we have seen do not explain what evidence the sub-committee considered or give a rationale for how it reached its decision. This, together with the failure to invite parents to make verbal representations, casts doubt over the decision-making process. This was fault.

The decision letter to both parents following the sub-committee concluded "there were no exceptional circumstances" to explain why the children could not use public transport accompanied by one of their parents. The sub-committee failed to recognise that both children were eligible due to living over the statutory walking distance from their school and so there was no legal basis to expect a parent to accompany them to school. This was fault.

The stage two decision letters did not explain Mrs C and Mrs G's right to approach us if they remained dissatisfied with the outcome of the appeal process. This was fault.

In Mrs C's case, the Council was not at fault for not considering the letters from D's school and first clinical psychologist, as these were not available at the time of the appeal. However, there is no evidence to suggest D's needs changed from the time her mother applied for home to school transport to the time the Council changed its mind and decided to offer specialist transport. The Council should have carried out the necessary checks with other professionals working with D at the time of Mrs C's application. Had it done so, on balance of probabilities, we are satisfied it would have decided to offer specialist transport sooner.

We have found fault with other councils for putting the onus on parents to produce a high standard of evidence to support their application for home to school transport. The statutory guidance is clear the Council must assess eligibility on an individual basis to identify the transport requirements of a child. If the Council finds a parent's evidence is lacking, it should collect any further evidence it needs to assess a child's eligibility for transport. Both children were attending school and in regular contact with professionals who could have provided the Council with advice. The Council did not seek this advice, and this was fault.

In Mrs G's case, the Council failed to respond adequately to her when she provided evidence to support her change of circumstances in September 2019. This was fault. The Council caused unnecessary confusion by telling Mrs G no decision had been made on her appeal when her stage two appeal had been dismissed in May 2019. This was fault.

In response, the Council acknowledged Mrs G contacted the service in September and again in November 2019. The Council said Mrs G did not follow up her request. However, Mrs G sent us the Council's automated email response from February 2020 showing she had contacted the Council. On the balance of probabilities, Mrs G contacted the Council for an update between November 2019 and February 2020 but did not receive a reply. The Council said the additional information Mrs G submitted after September 2019 was not reviewed. Mrs G says she still has not received a reply to her request. The Council should have replied to Mrs G within the 20 days as specified in its automated email reply, and not doing so was fault.

5.3 **Injustice**

Both Mrs C and Mrs G incurred costs as well as the stress and inconvenience of accompanying their children to school because of the Council's faults. The faults prevented D and H having the school transport they were entitled to.

In Mrs C's case, D's attendance in the past two school years was low. Given other difficulties the family experienced in this period, it is not possible to say with certainty that lack of suitable transport was the only reason for D's low attendance. However, we are satisfied the cost and difficulty of arranging alternative transport for D was one factor which prevented her attending school regularly. Consequently, D missed some education because of the Council's fault.

Mrs G says the lack of suitable transport contributed to her own emotional, mental and physical health issues. She says she spent a considerable amount of her time making sure her children were taken to various schools as she did not want their attendance to suffer. She says she felt mentally and physically drained and it caused her to miss or alter health care appointments for herself and children. Mrs G also says the amount of time it took to take various children to different schools affected her family and caused some of her children's behaviour to deteriorate. The Council's failure to provide suitable home to school transport for H contributed to Mrs G's stress. The Council has not resolved Mrs G's concerns about H's transport to school so the injustice is ongoing.

The Council's failure to invite parents to the stage two appeal deprived them of an opportunity to present their case for alternative transport provision. The Council has since updated its policy to allow verbal evidence to be given. It also ensures parents and carers are signposted to us at the end of the appeals process.

The Council missed opportunities through the appeals process to correct the faults in its decision making. This resulted in Mrs C and Mrs G taking time and trouble to bring their complaint to us to seek resolution.

6. The Ombudsman's Recommendations

6.1 Mrs C's case

To remedy the injustice identified in this report, the Council has agreed to:

- apologise to Mrs C and D for the faults identified in this investigation, and repay any costs incurred by Mrs C to transport D to school since 12 April 2019;
- pay Mrs C £150 for the time and trouble taken to resolve her complaint;
- pay Mrs C a further £250 to recognise the stress and inconvenience caused by the failure to provide suitable home to school transport; and
- pay Mrs C a further £500 to recognise the impact the failure to provide suitable home to school transport had on D accessing education from April 2019 to March 2020.

6.2 Mrs G's case

To remedy the injustice identified in this report, the Council has agreed to:

- apologise to Mrs G, H and their family for the faults identified in this investigation;
- pay Mrs G £150 for the time and trouble taken to resolve her complaint.
- pay Mrs G a further £300 to recognise the stress and inconvenience caused by the failure to provide suitable home to school transport and the impact this had on Mrs G and H;
- review Mrs G's application and offer H an alternative means of home to school transport which does not require his parents to accompany him; and
- pay Mrs G her reasonable travel expenses from 13 March 2019 when it decided H was an eligible child.

6.3 Service improvement

To improve the service offered to other families, the Council has agreed to remind officers making decisions about home to school transport, and those involved in appeals, of the following:

- The Council cannot insist parents and carers accompany children who live beyond statutory walking distance on the journey to school. For all other children, decisions about accompaniment should be made on a case-by-case basis.
- Where the child is eligible for free transport, parents and carers should not incur costs to use home to school transport offered to their child.
- Decisions made about home to school transport must take account of the individual needs of the child and consider whether

the journey is “safe and reasonably stress free, to enable the child to arrive at school ready for a day of study”.

- If the Council requires further evidence to decide if a child is eligible for home to school transport, it should consult relevant professionals already involved with the child.
- When making decisions about transport for children with special educational needs, the Council should show how it has considered the content of the child's education, health and care plan.
- Reasons for decisions must be recorded.
- Decision letters following appeals must set out how the Council carried out the review, who they consulted, what they considered and how the parent can escalate their case.

The Council has also agreed to:

- revise its home to school transport policy to ensure its approach to accompaniment reflects the statutory guidance;
- review all decisions to issue a travel pass made since September 2018 to ensure;
- it considered the individual needs of each child;
- it has not required parents and carers of children living beyond statutory walking distance to accompany their child on the journey to and from school; and
- no parent has been expected to incur costs to use the home to school transport offered by the Council where the child is eligible for free transport. Where costs have been incurred, the Council should repay these.

7. The Council's View

7.1 The Council accepted the Ombudsman's recommendations at the draft report stage.

7.2 The Council has subsequently carried out the following actions:

- Appointment of an Interim Eligibility Review Manager. This Manager is reviewing existing processes and procedures to reassure that they are compliant with statutory requirements.
- Recruitment of interim additional capacity in relation to Eligibility Officers, as well as establishment of a specialised eligibility team, to both provide capacity for timely review of cases as well as to support the Ombudsman review of cases.
- Legal services to review all revised processes and procedures for compliance as well as to arrange further training.
- Payments have been made to both families in line with the Ombudsman's recommendations.

- Written and verbal apologies have been made to both families.
- All potentially impacted cases going back to 2018 have been identified to be reviewed by end of October 2021, as agreed with the LGSCO.

8. Legal and Resource Implications

The agreed payments will be made from an appropriate budget.

9. Risk Management & Equality Impact Assessment Issues

- 9.1 The actions taken to date allow the service to implement the learnings from this case. Should these actions not be embedded, there is a risk that other parents would receive an unsuitable travel offer. This has the potential to impact both the pupil and family concerned, both in terms of school attendance and stress on the family so it is essential that there are future spot checks to confirm revised processes remain embedded.

10. Compliance Issues

- 10.1 The Council has welcomed and complied with all of the Ombudsman's recommendations with the outstanding action being the review of all other cases where there could have been a risk of a repeat of this issue where the expected end date is late October 2021, as agreed with the Ombudsman.
- 10.2 The Council has also revised its operational structure to create a specialist eligibility team which will support service improvement in this area.
- 10.3 Temporary additional resource has been put in place to provide extra capacity to review outstanding cases by late October 2021.
- 10.4 Revised processes will be implemented by the new Eligibility Team with spot checks on decisions taken.

11. Recommendations

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

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