

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

**Investigation into a complaint against  
Birmingham City Council  
(reference number: 17 017 296)**

**3 April 2019**

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## The Ombudsman's role

For 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

Miss X	Complainant and mother
Mr X	Complainant and son
Officer P	Council officer
Officer Z	Council officer

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## Report summary

### School Transport

A mother complains about the way the Council assessed her son's eligibility for post-19 transport funding assistance. The Council did not properly consider his application and significant delay meant that she had to transport her son to college every day, unsupported.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

The Council has agreed to take the following action to remedy the injustice identified in this report. The Council will:

- a) Apologise to both Mr and Miss X for the way it handled the post-19 transport application and the way it handled the whole process.
- b) Pay Mr X £1500 to acknowledge the distress and anxiety he suffered during the year he was unsupported by the Council. This sum is at the higher end of our scale of payment for distress. The circumstances are exceptional. The sum reflects the severity of the distress, the length of time involved, Mr X's vulnerability and takes into account the opinion voiced by medical professionals that the Council's actions directly impacted on Mr X's anxiety.
- c) Pay Miss X:
  - i. £1000 to acknowledge the distress she suffered pursuing the Council for support. The sum is at the higher end of our scale of payment for distress. It reflects the severity of the distress, the length of time involved and the anxiety experienced by Miss X as she undertook the daily five-hour round trip to college without support, while continuing to run her business;
  - ii. £800 to acknowledge the risk of harm to Miss X during the period in question. Risk assessments had suggested Mr X should be accompanied with a guide and a clinician had raised concerns with the Council about the risk Mr X's behaviour, when anxious, could present to Miss X.
  - iii. £300 to acknowledge the time and trouble Miss X took to pursue the complaint. The evidence indicates she had to be persistent to engage a response, engaging councillors and solicitors to elicit a response.
- d) Implement the findings of its current consultation on transport policy, which will involve considering the wording of its policy in this area. It should ensure applicants are clearly signposted to any revised policy. It should ensure staff keep records of all decisions made and communicate the reasons for these decisions clearly and promptly.
- e) Review all transitional cases such as Mr X's and write to those affected. If, upon writing to the relevant people, it receives any retrospective applications, it should consider these and record how it reached those decisions. It should report its findings to us.

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Those that are unsatisfied with its decision can come to the Ombudsman and the Council should direct them as such.

- f) Review its policies and procedures around providing escorts, ensuring that risk assessments are conducted when needed and in good time.
- g) Review its policies and procedures in relation to carer's assessments to ensure that Council staff are alert to situations where carers need support.

The Council must consider this 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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## The complaint

1. Miss X says her son's, Mr X's, application for post-19 transport funding was handled poorly by the Council. She said this caused her and Mr X an injustice. Her son is autistic and she says he found the uncertainty and anxiety caused by the Council's delay in decision-making very distressing.

## Legal and administrative background

### The law relevant to this complaint

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. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)
5. 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.

### Decision making

6. The Ombudsman's Principles of good administrative practice (2018), set out principles of good administration in decision making. These include:
  - being service-user focused
  - being open and accountable
  - acting fairly and proportionately

### Care assessments

7. Under the Care Act 2014 and Care Act Guidance, councils have a duty to carry out an assessment where "an adult may have needs for care and support" and, also consider carrying out a carer's assessment if it appears a carer may have a need for support.
8. The Care Act Guidance says an assessment "should be carried out over an appropriate and reasonable timescale taking into account the urgency of needs and a consideration of any fluctuation in those needs".
9. The care assessment must identify the total extent of needs before a council considers the person's eligibility for care and support. Any eligible needs met by a carer are not required to be met by the local authority, for as long as the carer continues to do so. The council must consider whether the carer is, and will continue to be, "able and willing" to care for the adult needing care. This must

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include consideration of the carer's activities beyond their caring responsibilities, for example employment or a desire to work.

10. A person and his/her carer, will have the best understanding of how the needs identified in a care assessment will best fit into their lifestyle and help them achieve the day to day outcomes identified.
11. Where a council has determined a person has eligible needs that are not being met by a carer, it must meet those needs (subject to the applicant meeting the financial criteria).

### **Parents' responsibility**

12. The Care Act guidance states the importance of full-time programmes for young people aged 16 and over to 'allow parents to remain in employment full time'. (*Paragraph 16.22*)
13. Parents and carers are responsible for ensuring children of compulsory school age attend school. There is no similar duty for dependent adult children with an Education, Health and Care plan (EHC plan). An EHC plan is for children and young people between 0 and 25 years old in education, who have additional needs. The plan coordinates a child or young person's health and social needs and sets out any additional support they may need. (*Education Act 1996, section 7*)
14. Parental responsibility ends when a young person reaches age 18 years old.

### **Transport to education setting**

15. Section 508F of the Education Act 1996 requires local authorities to make transport arrangements they consider "necessary" (or that the Secretary of State directs) to facilitate the attendance of relevant young adults at institutions where the local authority has secured the provision of education for the adult concerned. Relevant young adult means an adult who is under 25 years old for whom an EHC plan is maintained. (*The Children and Families Act 2014, section 82*)
16. When a council finds it is "necessary" to provide transport for the young adult under section 508F, then the transport must be free of charge (*Education Act 1996 section 508F(4)*).
17. If a local authority does not consider it "necessary" to provide transport under section 508F it may still choose to pay some or all of the reasonable travel costs under section 508F(8) or as social care provision under the Care Act.
18. Under section 508G of the Education Act 1996 local authorities are required to set out information about the travel provision they have in place for relevant young learners so they and their families can make informed choices between institutions. The SEN Code of Practice 2014 requires councils to have clear policies about transport in their Local Offer.
19. Councils can make payments to parents and carers of pupils with SEN to act as an escort or use the family car to transport them. Government guidance 'Home to School Travel for Pupils Requiring Special Arrangements' (2004), says councils should set out in their policy when they will do this and the amounts parents or carers are entitled to.
20. The application of a transport policy in relation to a disabled young person engages the Equality Act 2010. Councils are required to have regard to the need to advance equality of opportunity to access education between persons with a disability and those without.

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21. The Department of Education's Statutory Guidance for Post-16 Transport (2014/ 2017) says any complaint or appeal procedure about a transport decision should be published alongside the local authority travel policy statement.
22. The Upper Tribunal (Administrative Appeals Chamber) has considered transport for post-19 learners with an EHC plan (section 508F). The Tribunal commented that:

"The local authority has a duty to make transport arrangements for [a post-19 learner] if they consider that to be 'necessary' having regard to all the relevant circumstances. This is not a pure discretion. Although the question of what is necessary is a matter for them, in deciding that question they must exercise their judgment judiciously and in good faith. If they come to the conclusion that it is necessary, they must make the necessary arrangement and the transportation must be free of charge."  
*(Staffordshire County Council v JM, 2016] UKUT 246 (AAC)*

### **The Council's post-19 transport policy**

23. It is called the Adult Education Transport Policy Statement 2017-18/2018-19. It states, among other things:
- the Council does not consider it necessary to make any general arrangements for free transport or the payment of any travelling expenses. Whilst the Council retains a discretion to make such arrangements or payments, its policy is to do so only where it considers the circumstances are exceptional.
  - if someone considers their circumstances are exceptional, he/she should apply to the Council in writing, providing information as set out in the policy document. The policy document asks a young adult to provide relevant details including the person's age, current travel arrangements, the route, how the Council could assist. It also says applicants may be asked to provide other information to support their application.
  - each application will be processed as quickly as possible. The decision will be provided in writing within 21 days of the receipt of the application.

### **How we considered this complaint**

24. We spoke with the complainant and made enquiries of the Council. We gave both parties the opportunity to comment on a draft of this report. We considered the comments made before finalising the report.

### **What we found**

#### **Background facts**

25. Miss X complains with and on behalf of her son, Mr X. Mr X is autistic and has an EHC plan. Around February 2017 he was applying to attend a special needs college for a further year, College F. Previously the Council organised an escort to accompany him to College F. Mr X wanted to continue to go to College F but initially did not think this would be possible. Miss X and her son began looking at a placement at another college, College G. Miss X says she was told by the Council she should contact Officer P, an officer in the transport department, to explain the Council's policy on post-19 funding for transport. She did this in February 2017.

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26. The records show Miss X was told that there were no application forms she could use to apply. She said she was told she would be put on a waiting-list to receive an application form.
  27. She therefore wrote a request in an email on 26 March 2017. The request was for Mr X to be provided with transport funding to attend College G. The records do not show she was directed to the Council's policy informing her how to put together an application or told what information she would need to provide.
  28. The next day Officer P responded. He said he had discussed Mr X's proposed placement with officers. They confirmed Mr X would be accessing post-19 education. He said that therefore, it was not, "appropriate to provide free transport or other financial or other assistance to facilitate the attendance of adults receiving education." The word 'adults' was underlined and in bold. Officer P said the Council was not obliged to provide free transport to adults, under the law. He said it was 'vital' Miss X understood the Council's stance when considering Mr X's placement.
  29. Miss X queried this, saying she had previously understood from Officer P that the Council sometimes provides funding for some young people. She asked how funding could be turned down for Mr X when he had not, as yet, put his case forward.
  30. Officer P responded again that the Council did not provide funding for post-19 education.
  31. Miss X then received confirmation that Mr X could stay at College F. On 29 June 2017, she wrote again to Officer P. She said he told her to contact him again when Mr X's placement was confirmed. She asked him to start the process of applying for transport funding.
  32. Officer P asked what Mr X's year group was. She told him he would be 20 years old.
  33. He responded the next day, this time saying that, save for exceptional circumstances, the Council does not provide post-19 funding. He said it was therefore Miss X's responsibility to arrange transport for Mr X.
  34. Miss X said she had been given different information. She said she had been told that while the Council is not obliged to provide funding, under special circumstances it can. She also said that Mr X would not be able to access the education named on his EHC plan if transport was not provided.
  35. On 5 July 2017, she emailed Officer P asking for a response. She asked if the answer as to whether Mr X would get transport "still stands as a no". She said if it was she would need to know about the appeals process.
  36. Officer P responded, saying, "... in answer to your question, [the Council] does not provide transport to students accessing Post 19 education provision". He said he would send her an official letter by the end of the week. Miss X asked if there was an appeals process. He did not answer.
  37. On 10 and 12 July 2017, Miss X contacted the Council to say she had not received a letter.
  38. In response to our enquiries the Council says Miss X's email correspondence did not amount to a formal application for funding. However, it says it considered the content of her emails and noted that she did not provide any exceptional reasons



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as to why Mr X could not attend his placement without travel assistance provided by the Council.

39. On 14 July 2017, the Council sent a response, refusing assistance. It said that the Council is not obliged to provide free transport. However, it added that if there are “special circumstances” which are relevant to an application for transport assistance, these will be considered and assessed. Miss X was asked to answer a number of questions about Mr X so the Council could assess whether he would be entitled or not. These included questions about why Mr X needed assistance and whether he was able to access public transport. She was asked, in line with the questions set out in the Council’s policy, to confirm Mr X’s current travel arrangements.
40. She was also asked to provide details about the family’s circumstances, with ‘particular reference’ to how much Miss X could afford to pay for Mr X’s travel.
41. On 28 July 2017, Miss X responded, providing answers to the questions asked. She explained that she was on a low income and that if Mr X’s application was not successful, he would not be able to access education. She added that she hoped she had provided the information required.
42. She did not receive a response. She sent the information again on 2 and 9 August 2017.
43. On 22 August 2017, she emailed again. She said she had emailed twice and sent the information required by recorded delivery. She asked Officer P to acknowledge her response. He acknowledged her response on the same day but made no comment on the information she had provided.
44. On 30 August 2017, she asked for an update. She reminded Officer P that Mr X suffered from anxiety and that it was important for him to know what his routine would be. She said she needed to prepare to reduce his anxiety levels and it was concerning her that college started on 12 September 2017 and she still did not know how to transport Mr X to and from the site.
45. On 1 September 2017, having received no response, she asked for an update again. She said Mr X was getting “increasingly anxious” because she was unable to tell him how he would travel to college.
46. The records indicate she also phoned the Council around this period. On 11 September 2017, the day before college started, she contacted a councillor in a further effort to get an answer to her application. It was again explained that Mr X would have no way of getting to college if the transport application was unsuccessful, as Miss X worked full time.
47. At 20:58 on the night of 11 September 2017, Miss X was told by email that her appeal had been unsuccessful. She was not given any reasoning for the decision but was told she could seek a review if she disagreed.
48. In response to our enquiries the Council said Miss X had not provided enough supporting evidence in answer to the questions asked on 14 July 2017.
49. On 13 September 2018, Miss X asked the Council to clarify its reasons so she could appeal the decision.
50. On 15 September 2017, she asked again. On 18 September 2017, she asked for a review. The Council says it received her appeal in a bundle date stamped 21 September 2017. It said this bundle provided the relevant information.
51. However, the records do not indicate there was any response to this information.

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52. On 19 September 2018, a lead clinician, working for an NHS Trust, emailed the Council saying she was concerned the funding for Mr X's transport had not been approved. She said, among other things, that:
- the fact Mr X had not been told of the decision until the night before college started meant Mr X had no time to prepare for a change to his morning and evening routine.
  - she understood this had increased Mr X's anxiety and led to Mr X making verbal and physical threats that he would punch Miss X.
  - she understood that on one occasion during the previous week Mr X had hit Miss X, which was concerning because he had not shown physical aggression towards his mother for some time.
  - she was concerned about Miss X's safety. She said Miss X must find the situation frightening because of Mr X's physical stature.
  - Miss X was currently driving five hours a day to take Mr X to college and that she was exhausted. She said it was also having considerable financial implications in terms of Miss X's ability to work.
  - Miss X taking Mr X to college could be impacting upon Mr X's independence skills.
53. She asked the Council to take the above into account when making its decision.
54. The records we have seen do not indicate there was any response to this correspondence. Miss X says she took Mr X to college every day. The journey, she says, took on average five hours a day. Online travel mapping software confirms this. Miss X is self-employed. She says this enabled her to "work around" taking Mr X to college. However, she also says the strain of taking Mr X to college and maintaining her business meant she had to close down one aspect of her business, which affected her and her family financially.
55. On 29 September 2017 Miss X asked for an update on her appeal. She did not receive a response. On 7 October 2017, she met with her MP. She emailed the Council again on 9 and 12 October 2017 asking for a response.
56. On 13 October 2017 Officer P said he was progressing the appeal. He said he hoped to be able to give Miss X a timeframe and would do so on 16 October 2017.
57. Miss X emailed the Council on 17 October 2017, saying she had not been provided with the timeframe. She emailed again on 19 October 2017. Her case had been passed to a different officer, who asked for extra information. Miss X asked why she had not been asked for extra information before. She provided answers to the same questions she had been asked in July 2017. Her answers did not differ greatly, although she did explain that she had not had any conversations with Mr X's college placement about travel assistance.
58. She also said she was no longer able to work as she had to transport Mr X to and from college. She said this was causing the family financial hardship.
59. She added there was a safety aspect to consider. She said Mr X always travels with a person accompanying the driver and this had been stated as a necessity in a previous risk assessment.

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60. An exchange of emails around the information required continued for some time. On 1 November Miss X asked for an update again. The officer now dealing with her case, Officer Z, asked for further information. Miss X said:
- “You are causing my son a great deal of unnecessary suffering to his mental health and wellbeing with these months of uncertainty. Your actions appear deliberate.”
61. She provided the relevant information later that day.
62. On 20 November 2017 Miss X asked for an update. She asked again on 23 November 2017.
63. On 27 November 2017, another one of Mr X’s clinicians wrote to the Council asking for an update. He commented on the difficulties the Council’s delay was causing Miss X and her son. He said in his opinion Mr X had “severe and critical needs”. He also said that in his opinion, the “difficulties arranging transport are one of the largest contributing factors to the high risk of him losing his place in the community”. He asked for some indication from the Council as to when a decision would be made and whether it was likely to provide a transport solution.
64. Miss X asked for an update again on 4 and 11 December 2017. She also asked for a copy of the Council’s policy on transport for adult learners. There is no record indicating this was provided.
65. She continued asking for a response. We have not seen the letter but we understand she also asked a solicitor to write to the Council. Miss X says she did not incur any solicitor’s costs because she was told the transport was related to her son’s EHC plan and she was therefore able to receive legal aid.
66. On 12 December 2017, Citizens Advice submitted a complaint from Miss X. Within the complaint filed, Miss X said:
- she was being forced into hardship because she would have to give up her work and go on benefits.
  - when her son had transport, it was “his bit of independence and this has been removed. My son’s needs have not changed overnight just because he is 20 years old”.
  - Miss X continued to ask for a response to her complaint.
67. On 16 February 2018, the Council emailed Miss X saying it would provide funding for the remainder of the year. It said it had been a difficult decision. It accepted it had been a lengthy process and said it was looking into making small changes to ensure that all relevant information is collated and considered in the first instance.
68. Following more correspondence and the intervention of Miss X’s solicitors, the Council agreed, on 23 February 2018, to pay Miss X an hourly rate in addition to her fuel costs for taking Mr X to school. It agreed to backdate payment to 12 September 2017. It informed her of this on 9 May 2018.

### **Providing a guide**

69. On 20 February 2018 Officer Z wrote to Miss X confirming that she could have assistance until the end of the year. She was told an updated risk assessment was needed before this could be provided.
70. She also said the Council had a shortage of guides. Officer Z offered two options:
- a) the Council could provide a car to take Mr X to and from college but Miss X would have to support him on both journeys, or

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- b) if the risk assessment says Mr X can travel alone, he could do this.
71. Miss X replied to the Council, saying she was disappointed by this response. She said that previous risk assessments showed that Mr X must travel alone with a male guide. He could not travel with other pupils because of his high and complex sensory issues. She said this had not changed. She said this was reflected in the evidence she had already given the Council from Mr X's doctor.
72. She said she was unable to go to college with Mr X as, being the sole provider, she needed to work. She suggested a male guide who might be able to help. She said she was mentally and physically exhausted by the stress of the previous six months.
73. Miss X provided evidence to the Council which showed that since September 2017 she had managed to take Mr X to college almost every day, bar an occasional authorised absence.
74. Officer Z replied that a risk assessment needed to be done because Mr X had not had travel assistance since July 2017. Officer Z said that the male guide Miss X had suggested would need to go through the Council's recruitment process. Or, the Council would pay Miss X a form of personalised transport budget which would be in line with the hours it normally pays guides.
75. Miss X said she did not know why a male guide was necessary. She said the Council had decided this on the basis of an old risk assessment. It appears her previous reference to a male guide was based on the Council's risk assessment rather than her own personal view.
76. On 17 April 2018 Miss X wrote to the Council again. She said she had provided the Council with all the information it had required but had still not received any payment. She said she had been promised updates on Mr X's transport but had not received any. She said there was no need for Mr X to have a male guide and asked the Council to look into this urgently, as had been promised in February 2018.
77. On 24 April 2018, the Council provided payment of Miss X's costs from 15 February 2018. Officer Z said that the Council's risk assessment had said Mr X must travel with a male guide. It said a new risk assessment would be needed if he only needed a female guide. She asked for further evidence from Mr X's college and doctor. She said she would forward this to an occupational therapist to review.
78. Miss X responded that the Council was using a risk assessment dated 2014. She pointed out that the Council had said it would carry out a new risk assessment in February 2018 and asked if this had happened.
79. On 1 May 2018 Miss X asked College F to confirm with the Council that Mr X did not need a male guide. The college confirmed this the same day.
80. Mr X's clinician also wrote to the Council on 1 May 2018. He said, "... the deficit in service provision carries significant risk to [Mr X] and his mother who currently transports him". He strongly advised the Council to progress a new risk assessment. He said if there was any further significant delay he would, "... escalate the risk presented by this case to a higher level with health commissioners".
81. On 4 May 2018 Miss X asked for an update.
82. On 9 May 2018 Officer Z asked Mr X's college for his current risk assessment.

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83. At the time of the Council's response to our initial enquiries into the complaint, on 3 July 2018, it had still been unable to provide Mr X with a guide to accompany him to college. It has provided me with a copy of a 2012 risk assessment.

## Findings

### The initial application

84. From the outset, the Council made it difficult for Miss X to apply for transport funding. She was told she would be put on a list for an application form. She was not told what she was expected to provide for funding to be considered. Without showing it had considered Mr X's circumstances, the Council informed her, a number of times, that it simply did not provide funding for post-19 education. This was not true.
85. If Miss X had been directed towards the Council's policy at the outset, she would have better understood the discretion the Council says it applies. She would have known what information was expected. The Council placed obstacles in her path and this is fault.
86. The Council says Miss X did not provide any information about Mr X's special circumstances. But she was not initially asked to do so. She was only asked to inform the Council of Mr X's age. The evidence shows it had a rigid approach to enquiries of this nature, which may have put off a less persistent applicant.
87. I consider that Miss X made her initial application on 26 March 2017 and was rebuffed immediately. She added the detail of Mr X's confirmed school to her application in June, when he was given a place, but in total, the Council took 111 days to respond to her application. The Council's policy says applications will be processed as quickly as possible. This is unacceptable delay. It is fault and it caused Miss X and her son Mr X a significant injustice.
88. The Council is at fault for not informing Miss X how to make a full application and for not demonstrating any consideration of the circumstances of the case, other than Mr X's age. In answer to her question about whether there was an appeal process, she was simply told that the Council did not provide transport for post-19 students. She had to repeatedly ask for the information set out in its initial decision letter. This would have stopped most people pursuing an application and was fault.

### The review

89. The Council says that, when Miss X filed her response to the decision letter of 14 July 2017, she failed to sufficiently answer the questions set out. It says that Mr X was attending a course which was specifically for supporting students into employment and independence. It says it considered Mr X's personal aspirations. It also said that Miss X was able to work reduced hours which would enable her to transport Mr X to college and it considered this was reasonable. It therefore decided not to allow her appeal.
90. We consider that Miss X did answer most of the Council's questions. She did not provide supporting evidence but she was not asked to. While the Council is not obliged to help a person with their application, if it considered Miss X had not provided answers to some questions, it is reasonable for it to have told her, especially since she said that she hoped she had provided what was required and had sent it to the Council repeatedly with no acknowledgment. This is fault and

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the Council has already accepted it should have collected the information it needed at an earlier stage.

91. Despite Miss X's frequent requests for an update and explaining that the uncertainty was causing her autistic son great distress, the Council did not inform her of its decision until 20:58 the night before he was due to start college. This was 45 days from the date of her appeal. This is unacceptable and shows a disregard for Miss X and her son's anxiety.
92. The decision letter gave no reasons for refusal. Decisions should be taken in an open and transparent manner. This is fault.
93. The Council says Miss X provided the relevant information in her review request of 22 September 2017. It does not sufficiently explain why it then took the Council until 15 February 2018 to uphold her request for review; a wait of 146 days.
94. During this time Miss X continually asked for a response. The Council had sight of further evidence that its delay was causing Mr X serious anxiety. Mr X's clinician also requested a response on behalf of Mr X and Miss X, setting out the personal risk to both.
95. The Council was informed, several times, of the financial hardship caused to the family. Miss X said she was mentally and physically exhausted. She was trying to keep working and to take Mr X to and from college each day. She managed to achieve a 93 per cent attendance rate for Mr X during this time.
96. In its decision letter, the Council said the case had been complex and had involved individual case conferences led by Senior Officers to consider the information provided in relation to Mr X's needs. The Council kept no records of these meetings. It also failed to inform Miss X of the action it was taking to reach its decision. This is fault.
97. Furthermore, the Council had much of the information it needed to consider this matter when Miss X responded on 28 July 2017. In response to our enquiries, it says it changed its initial view because Miss X provided extra information about her financial position. She did not. She only provided extra evidence, which she could have provided if asked previously. When asked, she provided the information almost immediately. As noted below it is concerning that Miss X's financial position was considered as being relevant to the Council's decision about Mr X's application.
98. The Council says Miss X provided further information about Mr X's condition. Again, the information provided was not wholly different from the information provided at the beginning of the process. Miss X repeated her statement that Mr X had a diagnosis of autistic spectrum disorder, moderate to severe learning disability, ADHD and OCD. He also had a diagnosis of sensory impairment related to a sensitivity to noise, light and texture. This was the same statement she had used in answer to the initial questions from the Council. It only differed where she added he had language and communication difficulties and suffered from extremely high levels of anxiety, which could lead to negative behaviours.
99. She referred the Council to Mr X's risk assessment, which it already had a copy of. She had already told the Council, in other correspondence, about Mr X's anxiety. She provided some medical reports, but she was not asked to produce these before. They confirmed the above but they could have been asked for much earlier. The only reason Mr X's doctors provided additional information was to get a response.

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100. It is of concern that the Council says it refused Miss X's application in July 2018 following feedback from his college which indicated he was working towards independence. This suggests the Council thought transport support was not necessary. However, in the same response, the Council says it was content that Miss X would support Mr X by taking him to college. This clearly indicates the Council felt Mr X needed support but viewed it reasonable for Miss X to bear that burden by reducing her working hours. Furthermore, even if the Council was trying to address Mr X's personal aspiration to be more independent, it has not demonstrated how this sits with risk assessments which showed that Mr X needed support to go to college. The Council did not show what consideration it gave to Miss X's statement that Mr X would not be able to access his education placement if transport was not provided. She specifically told the Council that Mr X could not access public transport or travel independently. The Council did not demonstrate that this was considered. Nor is there any evidence that the Council asked for Mr X's view, if it felt this conflicted with the information given by Miss X. This is fault.
101. In any event, the extra detail Miss X provided did not appear to encourage the Council to act any faster. When it had all the information required, the Council still took months to come to a decision, even though it was aware that medical practitioners thought the situation, as it stood, was a risk for both Mr and Miss X. This was fault.
102. In its February 2018 decision letter, the Council accepted it had been a lengthy process. But, even so, the Council initially only agreed to provide Miss X with funding from the date of the delayed decision. It knew Miss X was undergoing financial difficulties, but did not pay these funds until 24 April 2018, and after she had chased payment. This was a further 68 days wait. This was fault.
103. The Council accepted the process had been overly lengthy. Principles of good administration dictate that the Council should not profit from its own delay. It is disappointing it took until 14 May 2018 for the Council to agree to backdate the payments, and after Miss X instructed a solicitor. This is fault.

### **Concerns about Council policy**

104. The law says that if the Council considers it is necessary for an adult who is over 19 to have transport provision then this must be provided. It does not say that it will only do so if there are exceptional or special circumstances, which is what the Council's policy currently says. The language the Council uses in its policy gives the impression a person's circumstances must be such that he/she not only 'needs' assistance, but their circumstances are exceptional, which indicates they must be different to other people who have similar needs. That is not what the law says. This is fault.
105. As it stands the policy could dissuade people from applying for post-19 travel assistance even when it is necessary for them. This is fault.
106. It might be that the Council initially considered Mr X's situation was not exceptional. It might be that it considered his circumstances were not special. It is difficult to tell as the Council did not keep records. The Council was not open and transparent about its decision-making process and this was fault.
107. But, in any event, that is not the test. The test is whether the Council considered transport funding for Mr X to reach his place of education was necessary. The Council did not demonstrate that it followed the right test in law, either in its policy or in its overall consideration of Mr X's situation. This was fault.

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108. The Council points out that the Government has recently re-issued guidance on Post-16 transport issues. The guidance says the overall intention of the Post-19 Adult duty, is to ensure that those with the most severe disabilities, with no other means of transportation, are able to undertake further education and training after their 19<sup>th</sup> birthday to help them move towards independent living.
109. The guidance does not explain what it means by “the most severe disabilities”. The test has not changed. The position remains that the Council should provide funding for those post-19 adults whom it considers it is necessary to provide transport funding for and who have no other means of transportation.
110. The Guidance also reaffirms that local authorities should exercise their power to provide transport or financial support reasonably, taking into account all relevant matters.
111. Mr X had no other means of transportation available to him, other than his mother. It was not reasonable for the Council to place her in a position where she was forced to travel five hours a day to take him to and from college, unsupported. She could not afford to do it, her business suffered and she should not have had to do it. She was neither able nor willing to be the “other means of transportation”.
112. The Council has now started a consultation about proposed changes to its transport policy with a view to adopting a single policy for children and young people aged 0 to 25 years old, which involves consideration of the post-19 policy wording.

### **Irrelevant considerations**

113. To determine if Mr X’s circumstances were special, the Council asked Miss X questions about her financial ability. Its policy does not say this information should be provided but even so, it specifically asked Miss X this question. The Council also said that when it eventually agreed to provide funding, one of the reasons it changed its view was because Miss X had provided it with further information about her finances.
114. Miss X’s financial situation was not a relevant consideration. Miss X was not willing and able to take Mr X to college. The Council should have only considered how Mr X would get to college and whether funding was necessary. It should not have been looking to Miss X to take on the responsibility of taking her son to college.
115. Mr X’s transport was not Miss X’s responsibility. He is over the age of 18 years old. The Council has a statutory duty to provide post-19 transport if it considers it necessary to do so. It should not limit its consideration of whether funding is necessary or not if the young adult has an available parent. It is the Council’s responsibility to ensure it meets the needs set out in an EHC plan, not the parents’.
116. To squarely lay the burden of dealing with transport costs, arrangements and risks at Miss X’s door, without demonstrating proper consideration as to whether the Council should use its discretion in Mr X’s case or not, was fault.

### **Guide to college**

117. By July 2018, the end of the last college term, the Council had still not found a guide to accompany Mr X to school. It says it had a shortage of guides and it is making every effort to address the issue.



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118. Initially it considered Mr X needed a male guide. It justified this approach by referring to an old risk assessment and it did so even though it had initially told Miss X she wouldn't be able to have a guide until a new risk assessment was undertaken. We have seen no evidence that a new risk assessment was ever conducted.
119. The only assessment the Council has provided me with is dated in June 2012. Given the amount of times the Council was warned about the significant risk the situation presented, we consider it should have conducted another risk assessment, in line with what it said it would do. This is fault.
120. Miss X also had to press the Council to look at the option of a female guide. The Council said a new risk assessment would have to be conducted to start this search but did not complete one. This was fault.
121. Miss X asked the college and Mr X's doctor to provide supporting information to show Mr X could use a female guide. But there is no evidence the Council used this information to then search for a female guide.
122. Knowing the strain the daily five hour commute was putting on Miss X and having been told by Mr X's doctor again in May 2018, that this was a significant risk, this was fault.

### **Carers Assessment**

123. Since issuing our draft report, the Council has provided evidence that Miss X was assessed on 23 August 2018. It says that an extra £120 was provided to Miss X after Mr X's support plan was drawn up at the end of October 2018.
124. However, we have not seen evidence the Council considered how the (on average) five-hour journey Miss X had to complete daily for the academic year, which was the focus of this complaint, impacted on her as a carer. She repeatedly told the Council she was struggling but the Council did not respond appropriately until after she had been transporting Mr X for the full academic year. She says the Council ignored that:
- she wanted to continue to work but was increasingly unable to do so;
  - had a back condition which was made worse by driving five hours a day, and that;
  - driving alone in the car with Mr X was a safety risk.
125. The records show that Miss X was not "able and willing" to take Mr X to college every day. Government guidance emphasises the importance of full-time programmes for post-16 learners so parent carers can work.
126. Where a college placement is less than five days, councils must look at providing training or volunteering opportunities, or additional care support, so carers can work full-time. The Council should have considered how it could support Miss X to remain in work alongside her caring responsibilities.
127. The Council did not act on this information until February 2018, almost eight months after Miss X's application in June 2017. This is fault.

### **Conclusions**

128. Miss X and Mr X have suffered a number of injustices throughout this process. To an extent, the financial injustice has been remedied by the Council's reimbursement of Miss X's travel and fuel costs.

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129. However, we also have to consider the injustice caused by both the Council's unwillingness to initially consider Miss X's application fairly and the overall prolonged delay. We also have concerns about the wording of the Council's policy and how that might dissuade applicants who might be entitled to support from applying for assistance.
130. Mr and Miss X suffered the injustice of almost a full year without any support because of serious failings in the Council's approach to this case. This is fault which caused significant injustice. We have made recommendations to remedy that injustice.

### **Agreed action**

131. We welcome the Council's constructive response in agreeing to remedy the injustice identified in the report and to improve its policies and procedures to avoid similar problems for others in the future.
132. The Council will:
- a) Apologise to both Mr and Miss X for the way it handled the post-19 transport application and the way it handled the whole process.
  - b) Pay Mr X £1500 to acknowledge the distress and anxiety he suffered during the year he was unsupported by the Council. This sum is at the higher end of our scale of payment for distress. The circumstances are exceptional. The sum reflects the severity of the distress, the length of time involved, Mr X's vulnerability and takes into account the opinion voiced by medical professionals that the Council's actions directly impacted on Mr X's anxiety.
  - c) Pay Miss X:
    - i. £1000 to acknowledge the distress she suffered pursuing the Council for support. The sum is at the higher end of our scale of payment for distress. It reflects the severity of the distress, the length of time involved and the anxiety experienced by Miss X as she undertook the daily five-hour round trip to college without support, while continuing to run her business;
    - ii. £800 to acknowledge the risk of harm to Miss X during the period in question. Risk assessments had suggested Mr X should be accompanied with a guide and a clinician had raised concerns with the Council about the risk Mr X's behaviour, when anxious, could present to Miss X.
    - iii. £300 to acknowledge the time and trouble Miss X took to pursue the complaint. The evidence indicates she had to be persistent to engage a response, engaging Councillors and solicitors to elicit a response.
  - d) Implement the findings of its current consultation on transport policy, which will involve considering the wording of its policy in this area. It should ensure applicants are clearly signposted to any revised policy. It should ensure staff keep records of all decisions made and communicate the reasons for these decisions clearly and promptly.
  - e) Review all transitional cases such as Mr X's and write to those affected. If, upon writing to the relevant people, it receives any retrospective applications, it should consider these and record how it reached those decisions. It should report its findings to us.
- Those that are unsatisfied with its decision can come to the Ombudsman and the Council should direct them as such.

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- f) Review its policies and procedures around providing escorts, ensuring that risk assessments are conducted when needed and in good time.
  - g) Review its policies and procedures in relation to carer's assessments to ensure that Council staff are alert to situations where carers need support.
133. The Council must consider this 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*)

## **Final decision**

134. We have found the Council at fault and made recommendations to remedy that fault. The Council has accepted our recommendations and we have now completed our investigation.