

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

**Investigation into a complaint about
Hampshire County Council
(reference number: 21 004 383)**

28 June 2022

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr X	The complainant
Z	His son

Report summary

Education: school transport

Mr X complained the Council failed to arrange suitable school transport for his son, Z.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

In addition to the above, and to remedy the injustice caused to Mr X by its faults, the Council has agreed it will, within four weeks of the date of our report:

- apologise to Mr X for the faults in its handling of Z's transport application, and delay, time and trouble these caused;
- pay Mr X its mileage allowance for his journeys driving Z to and from school until suitable transport was put in place (if it has not done so already);
- pay Mr X £250 to acknowledge his and his wife's time and trouble driving Z to and from school each day until suitable transport was put in place. This is a symbolic amount based on our published [Guidance on Remedies](#); and
- pay Mr X £150 to acknowledge his time and trouble corresponding with the Council about, and appealing against, the suitability of its transport offers. This is a symbolic amount based on our published [Guidance on Remedies](#).

And, the Council has also agreed it will, within three months of the date of this report, provide us with evidence it has reviewed its school transport offer letters to ensure it provides families with details of the statutory guidance, its policy and the appeals process.

The Council should provide us with evidence it has completed these recommendations.

The complaint

1. Mr X complained the Council failed to:
 - arrange suitable school transport for his son, Z. It initially offered transport with travel times outside the statutory guidance. It then offered transport without the escort Z needed; and
 - provide information about its appeals process when he rejected the initial offer.
2. Mr X and his wife incurred the cost, time and trouble of taking Z to and from school each day until the Council provided suitable school transport.

Legal and administrative background

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this report we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

The relevant law and guidance – home to school transport

4. Councils must provide free home to school transport for eligible children of compulsory school age to their qualifying schools. (*Education Act 1996, section 508B and Schedule 35B*)
5. A council may make travel arrangements for an eligible child, if the parent agrees, by offering a mileage allowance to the parent to drive the child to school. (*Education Act 1996, section 508B and Schedule 35B*)
6. 'Home-to-school travel and transport statutory guidance' ('the Guidance'), issued in July 2014 provides councils with guidance about suitability of travel arrangements. This says:
 - best practice suggests the maximum journey to or from school for a child of primary school age should be no more than 45 minutes and for secondary school age 75 minutes. For children with special educational needs or disabilities, journeys may be more complex and a shorter journey time, although desirable, may not always be possible; and
 - for arrangements to be suitable, they must be safe and reasonably stress free, to enable the child to arrive at school ready for a day of study.
7. The Guidance also:
 - says councils must publish general arrangements and policies for home to school travel and transport for children of compulsory school age. This should also set out clearly complaints and appeals procedures for parents to follow should they have cause for complaint about the service or wish to appeal about the eligibility of their child for travel support; and
 - recommends a two-stage review/appeals process. Stage one being a review by a senior officer, and Stage two a review by an independent appeal panel.

The Council's home to school transport policy

8. The Council's policy is published on its website. This includes the following.

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- Transport arrangements will allow the child to reach school without undue stress, strain or difficulty. Shorter journey times are desirable in achieving this. As a guide, maximum journey times should be 45 minutes for primary school age children.
 - An escort will be provided on SEN transport when required based on the needs of the students travelling.
 - The most economic form of transport available will be provided, having due regard to the availability of the transport as determined by the Passenger Transport Group (PTG) of HCC and the maturity, health or special needs of the pupil, as determined by the Head of Transport in Children's Services Department.
 - In certain circumstances, the most suitable arrangement, with parents' consent, might be for parents/carers to provide the transport, for which an allowance, currently 35p per mile, will be paid.
 - The Council has a complaints and appeals process. The appeals process is set out in an appendix to the policy and provides a two-stage process as recommended in the statutory guidance.

How we considered this complaint

9. We produced this report after speaking to Mr X and considering all the information he and the Council provided about the complaint.
10. We gave Mr X and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

What happened

11. Our summary of the key events is set out below. It is not meant to show everything that happened.
12. Z has special educational needs (SEN) and is eligible for free school transport. He was five in March 2021 and due to start primary school in April 2021. His school was over 12 miles from home.

Application for school transport for Z in February 2021

13. On 12 February the Council's Home to School Transport service received an application for home to school transport for Z from his school. The school confirmed in the application form Z needed an escort because of his age, speech, language and communication difficulties.
14. The Council says when it received this application, it considered the travel arrangements it could put in place for Z. There was an existing transport arrangement, with an escort, for three other children attending his primary school. The travel times for these children from home to school on this transport were between 40 to 60 minutes.

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15. The Council proposed adding Z to the existing transport. He would be picked up first, so the journey times for the other children would be unchanged. Z's journey time would be 1 hour 40 minutes, which exceeded the Guidance and the Council's own policy of a maximum of 45 minutes for a child of Z's age. The Council says the only other option was an individual taxi for Z, but it had a shortage of available escorts. The existing transport met Z's need for an escort.
 16. The Council added Z to the existing transport on 9 March. It says it then began a discussion with Mr X about the arrangement it had made for Z.
 17. Mr X says the Council advised him it had arranged transport and added Z to an existing route. Z would be picked up at 7.20am and the journey time would be 1 hour 40 minutes. He told the Council he was unhappy with this offer because of the journey time but was informed this was the only arrangement the Council could offer. As Mr X was unhappy with the Council's offer, he and his wife had no alternative but to drive Z to school each day themselves.
 18. Mr X asked whether there was an escalation process. The Council told him he could appeal if he believed the transport offered was unsuitable and explained the process.

Mr X's appeals and the Council's response

19. Mr X appealed. In response to his appeal the Council accepted the proposed travel time of 1 hour 40 minutes was too long and the Guidance said this should be no more than 45 minutes for a child of Z's age. It offered Mr X the option of a mileage allowance for taking Z to school. Mr X told the Council this was not a viable option. It confirmed it would look at alternative provision for Z.
20. In April the Council told Mr X it could arrange a taxi for Z but not an escort. It again offered Mr X the mileage allowance for driving Z to school or the option of accompanying Z in the taxi.
21. Mr X was unhappy with these proposals. He appealed and asked the Council to provide transport which did not require parental involvement.
22. In response to the appeal the Council confirmed it accepted the mileage allowance option required parental agreement, which Mr X had not given. It explained it did not have enough escorts for all SEN routes and did not have an escort available for Z's individual taxi. It said its transport officers had assessed Z could travel without an escort. If Mr X did not agree to this, or the mileage allowance, the only other option available was the contracted school vehicle route originally offered.

The assessment of Z's need for an escort

23. Mr X questioned the officers' assessment Z could travel without an escort. The Council said they had used the school's transport application form which provided information about the child's needs and it had access to records such as Education Health and Care Plans to help with their assessments.
24. In May Mr X appealed against the assessment Z did not need an escort. He referred to the school's transport application which stated Z required an escort.
25. The Council accepted the appeal. It told Mr X they did not have any available escorts for the moment and would re-tender the route to include an operator provided escort. In the meantime, it could offer the mileage allowance for Mr X to drive Z to school or a taxi with Mr X accompanying Z to and from school.

Mr X's complaint and current position

26. Mr X was unhappy with the situation and complained to us. He and his wife continued to drive Z to and from school.
27. The Council told Mr X it had been able to arrange a solo taxi with an escort for Z. This arrangement started shortly after Mr X complained to us and remains in place.

Conclusions

The transport offer

28. The Council knew from the outset Z's journey time on the existing school transport would significantly exceed the maximum set out in the Guidance and its own policy for a child of his age. There is no evidence it discussed this with Mr X. It seems instead to have put this to him as the only option, which he immediately rejected because of the journey time.
29. But it took an appeal by Mr X for the Council to confirm it accepted the proposed journey time of 1 hour 40 minutes was not suitable. We consider this was fault by the Council.
30. Z had already started school by then with Mr X driving him there and back each day because the Council had not arranged suitable transport.
31. Mr X also made it clear he would not accept the offer of a mileage allowance for driving Z to school. The Council knew this travel arrangement could not be put in place without the parent's agreement. But there was further delay, and another appeal by Mr X, before the Council confirmed it accepted this point. We consider this was fault.
32. This left the option of an individual taxi with or without an escort. The Council said it had now assessed Z did not need an escort. But it had initially accepted Z needed an escort as confirmed by his school in the application form. It later said it had used this same form to assess Z could travel without an escort. We have not seen any other records used by the Council for its assessment. We do not consider the Council properly assessed Z's need for an escort in April, or had a sound reason for the change in view about the need for an escort. In our view this was fault by the Council.
33. It was not until 3 June, after a further appeal by Mr X, and some three months after it had received Z's transport application, that the Council finally offered to arrange a taxi with an operator provided escort to take Z to school. It then took some weeks to source this transport.
34. The Council has told us it needs about 600 school escorts a day and has dedicated four officers supporting them. Although there is a permanent recruitment process it currently has a shortage of escorts, caused in part by the impact of COVID-19.
35. We understand the difficulties this shortage causes the Council in arranging school transport where an escort is needed. But we consider it should have been clear by mid-March, the only option for providing suitable home to school transport for Z, without parental involvement, to fulfil its statutory duty, would be an individual taxi with an operator provided escort. In our view, the Council should have sourced provision at this stage, and its failure to do so was fault.

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36. We consider the above faults delayed the arrangement of suitable school transport for Z. This caused Mr X the expense, time and trouble of driving Z to and from school from April to July 2021 and time and trouble appealing offers of unsuitable transport.

Information provided by the Council about the statutory guidance on travel time and the appeals process

37. This information is published in full on the Council's website. But, based on the evidence we have seen, the Council does not make parents aware of the Guidance, or its own policy, when it offers children transport with journey times in excess of the Guidance. And it does not notify parents about the appeals process in these cases.
38. We consider this is fault by the Council, which is likely to affect other children, and their families, for whom it has arranged transport with journey times in excess of the statutory guidance.

Recommendations

39. In response to our draft report the Council told us it would complete the personal remedies we recommended for Mr X, and also the review we proposed of the content of its school transport offer letters. We welcome the Council's acceptance of our recommendations.
40. To remedy the injustice caused to Mr X by the above faults, the Council has agreed it will, within four weeks of the date of this report:
- apologise to Mr X for the faults in its handling of Z's transport application, and delay, time and trouble these caused;
 - pay Mr X its mileage allowance for his journeys driving Z to and from school until suitable transport was put in place (if it has not done so already);
 - pay Mr X £250 to acknowledge his and wife's time and trouble driving Z to and from school each day until suitable transport was put in place. This is a symbolic amount based on our published [Guidance on Remedies](#); and
 - pay Mr X £150 to acknowledge his time and trouble corresponding with the Council about, and appealing against, the suitability of its transport offers. This is a symbolic amount based on our published [Guidance on Remedies](#).
41. The Council has also agreed it will, within three months of the date of this report review its school transport offer letters to ensure it provides families with details of the statutory guidance, its policy and the appeals process.
42. The Council should provide evidence it has completed these recommendations.
43. In addition to the above, the Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

44. We have completed our investigation into this complaint and have found fault by the Council. The action we have recommended is a suitable remedy for the injustice caused.