

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

**Investigation into a complaint about
Northumberland County Council
(reference number: 21 004 235)**

17 August 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

Miss X	The complainant
Y	Her son

Report summary

School transport

Miss X complained about the Council's decision not to provide her son, Y, with transport to college. Miss X said the Council failed to properly consider Y's circumstances and her appeal, and its communication was poor.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, we recommend within one month of the date of this report the Council should:

- apologise in writing to Miss X for the identified fault;
- pay Miss X £200 to recognise the time and trouble caused to her by the failings in dealing with her complaint;
- pay Miss X £100 to recognise the avoidable uncertainty she was caused by the failure to keep her properly updated throughout the application and appeals process;
- remind staff dealing with transport applications and appeals of the importance of providing timely, clear, consistent, and well-reasoned decisions and ensuring decision reasons are recorded; and
- re-assess Y's transport application and if refused, ensure the decision explains the calculation of school distances and course levels to allow Miss X to then submit an informed appeal. If the Council decides to provide transport it should also reimburse Miss X for the costs she has incurred to date.

Within three months of the date of this report, the Council should:

- revise its post-16 transport policy to make it clear to applicants they can contact the Council about course levels and to check or compare measures of school distances; and
- review decisions issued for the school year September 2021 where it has refused transport to children with Education, Health and Care plans (EHCPs) under its post 16-transport policy based on distance or course level. It should ensure no transport applications were declined based on exclusions relating to school distance and course levels without any explanation given. If any applications are found, these should be reassessed and if transport agreed, parents should be offered a remedy for the missed provision. If transport is not agreed, parents should be offered the option to appeal.

The Council has accepted our recommendations.

The complaint

1. Miss X complained about the Council's decision to decline her application for transport provision for Y. Miss X feels the Council failed to consider all the relevant information when deciding on her application and communicated poorly throughout.

Legal and administrative background

Ombudsman's role and powers

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 cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. 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.

Legislation and guidance

5. The Education Act 1996 explains councils have a duty to publish a transport policy statement. This should set out the transport arrangements they consider necessary for attendance at education or training and the financial help available for:
 - learners of sixth form age (aged 16-19 if they started the course before their 19th birthday); and
 - learners with Education, Health and Care plans (EHCPs) up to the age of 25 who started their programme of learning before their 19th birthday.
6. There is no entitlement to transport to and from an educational setting. Transport should only be named in an EHCP in exceptional circumstances.
7. The SEND Code of Practice says councils should ensure parents are made aware they will consider transport in line with their published policy during EHCP discussions.

Transport appeals

8. Councils should have an appeals process in place for parents who wish to appeal about their child's eligibility for travel support. (*Home to School transport guidance July 2014 paragraphs 54-55*)
9. The guidance recommends councils adopt the following appeals process:
 - Stage 1: review by a senior officer. Within 20 working days of receiving a parent's written request to appeal the decision, a senior officer reviews the original decision. They send the parent a detailed written notification of the outcome of the review. This sets out the nature of the decision, how they conducted the review, what they took into account, the rationale for the decision reached, and how to escalate their case to Stage 2; and

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- Stage 2: Within 40 working days of receipt of the parent's request for an independent appeal panel to consider written and verbal representations, a detailed decision is sent. This should set out the decision reached, how the review was conducted, what was considered, the rationale for the decision, and information about appealing to us. (*Annex 2 of the guidance*)
10. Appeals can challenge the council's assessment of a child's eligibility, its measurement of distance to school, and its assessment of route safety. Parents can also ask the council to consider any personal and/or family circumstances.

The Council's post-16 transport policy

11. The Council's post-16 transport policy statement recognises that some students may not be able to travel to school independently. It explains parents may apply for travel assistance and its SEND panel will consider if it can give additional support.
12. The Council's policy sets out the criteria it applies to assess eligibility for post-16 transport funding. Students must meet all the criteria and the policy recommends applicants check their eligibility carefully before applying for a course or for transport.
13. The criteria says courses attended must be at the nearest suitable learning provider with the distance measured by the Council's approved system. The policy explains this system is QGIS and it applies measurements strictly.
14. The policy does not direct parents on how to access this system to compare distances for themselves.
15. The criteria also says students must be starting a course at a higher level than their previous achievements. It explains, for example, this means progressing on from a Level Two to a Level Three course. For SEND students, the Council may consult a 'Curriculum Expert' to define the progression criteria.
16. The policy does not give information on how parents can establish course levels for themselves.
17. The policy also sets out the appeals process where a parent wishes to challenge the Council's decision.
18. The Council's policy explains service users can base appeals on the student's or family's personal circumstances, or how the Council applies its policy, but not about the policy itself. It does not give applicants the opportunity to give verbal submissions to the panel at Stage 2.

Principles of Good Administrative Practice

19. In 2018, we published a [document](#) setting out principles of good administrative practice and what we expect to see from councils.
20. This document recommends councils:
 - are open and clear about policies and procedures;
 - ensure any information and advice provided is clear, accurate and complete; and
 - clearly explain the rationale for decisions it makes.
21. The document also explains councils should operate an effective complaints procedure.

The Council's complaints procedure

22. The Council's published complaints procedure explains it uses a two-stage process for dealing with complaints.
23. At Stage 1, the Council will acknowledge formal complaints within three working days of receipt. It will review the complaint on its individual merit and respond to it within 15 working days. For complex or serious complaints, the Council may need more time but will discuss that with the complainant if needed.
24. If a complainant is unhappy, they can ask the Council to move the complaint to Stage 2. At Stage 2, the Council will appoint a senior officer who was not previously involved in the complaint, and they will aim to provide a response within 20 working days.
25. If a complainant remains unhappy after they receive a Stage 2 response, they can complain to us.

How we considered this complaint

26. We produced this report after examining relevant documents and interviewing the complainant and relevant employees of the Council.
27. We gave the complainant 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.
28. We considered:
 - the Council's School Transport policy;
 - the guidance set out in the Special Educational Needs and Disabilities (SEND) Code of Practice; and
 - the government's guidance on Transport to education and training for people aged 16 and over.

What we found

What happened

29. Y was issued with a new EHCP on 3 January 2020, ahead of starting at a new college. This named Y's college but did not contain any provision for transport and the Council did not talk to Miss X about how its transport policy fitted with Y's choice of course or college.
30. Miss X applied for school transport for Y in July 2020. The Council declined Miss X's application as it felt there was another college nearer to her home providing a similar course to the one Y was about to start.
31. On 14 July, Miss X emailed the Council to appeal against its decision to refuse transport for Y. She argued the time it took to get to Y's college, compared with the one the Council judged to be closest, differed depending on the route mapping service used. One route showed Y's college to be two minutes closer, where one showed it to be two minutes further away. Miss X asked the Council to consider her appeal with this in mind.
32. On 23 July, the Council sent its Stage 1 review response to Miss X. The Council explained its policy was to only provide transport to students who attended their closest learning provider for their chosen course. As the Council had decided

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- there was a closer college offering Y's course, it said it could not offer travel assistance.
33. The email the Council sent Miss X did not address her comments on calculating the distances or provide any clarification on how it worked out which college was closest.
 34. On 9 August, Miss X submitted her Stage 2 appeal for panel consideration. Miss X explained Y could not use public transport due to his special educational needs. Miss X said the Council agreed with Y's chosen college but never said this might affect his chances of receiving transport provision. Miss X argued the difference in distance between Y's college and the one the Council said was closer was negligible so there would be little difference in transport costs.
 35. The Council acknowledged Miss X's appeal request. It wrote to her on 23 August to say the panel was due to meet the following week.
 36. Miss X emailed the Council on 8 September to ask for the result of the appeal. The Council responded that day to explain it would notify Miss X of the result once the panel heard the appeal.
 37. The panel was presented with Miss X's appeal at a hearing on 21 September.
 38. On 24 September, Miss X emailed the Council once again to ask for the outcome of the appeal.
 39. On 1 October the Council wrote to Miss X to deliver the outcome of the Stage 2 panel hearing. The Council explained the panel had considered the post-16 transport policy as well as the information Miss X had provided. It explained the panel had found the post-16 transport policy required a student to be moving to a higher-level course than their previous achievements to qualify for funded transport. The panel said Y's course was a lower level than his previous studies and so he was not eligible for funded transport.
 40. The letter did not explain how the panel had worked out the level of Y's college course compared to his previous studies. It also did not mention the distance criteria the Council had relied on when declining Miss X's initial application or Stage 1 review.
 41. Miss X complained to the Council on 24 November. Miss X said she did not feel the Council had followed its published process. She said she never received written details of how the appeals process would work, and it missed the published deadlines for the Stage 2 appeal. Miss X said she was not kept informed about when the panel would hear her appeal.
 42. Miss X also said the Council did not make her aware of the implications of picking Y's chosen college over other local colleges. Miss X said she did not feel Y's circumstances had been properly considered and there was not sufficient public transport to get him to and from college.
 43. On 14 December, the Council responded to Miss X's complaint. It explained the panel hearing had taken place within 40 days of Miss X's appeal as it should have done but agreed she had not been informed of the date of this in advance. The Council also agreed it had failed to meet the five-day deadline to inform Miss X of the outcome of the hearing. The Council explained the panel had considered all the points and arguments Miss X had made in conjunction with the Council's policy.

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44. The Council accepted Miss X may not have been told specifically about its transport policy during the EHCP meeting but explained this information is available on its Local Offer. The Local Offer is published on the Council's website and sets out information about what support it offers children and young people with special educational needs or disabilities and their families.
 45. The Council apologised for the aspects of the process that had fallen below Miss X's expectations and agreed to review the way it offers information. However, it said there was no reason to review the decision about Y's transport as this had been made correctly.
 46. On 22 December, Miss X emailed the Council to disagree with its response and asked to discuss this further. There was a delay over the Christmas period, but the Council responded to Miss X on 5 January 2021 to let her know it would be in touch shortly. On 8 January, the Council agreed to consider Miss X's complaint jointly with another complaint she had raised about a separate issue.
 47. After a series of delays, Miss X contacted us on 23 June, and we wrote to the Council that day to ask if the complaint had exhausted its usual process.
 48. The Council responded to us and Miss X by issuing its Stage 2 response on 25 June. This dealt with the subject matter of this complaint, as well as a second complaint Miss X had raised about a different issue. The Council explained Y could have attended the closer college but opted not to and it was not for the Council to make that decision for him. It explained Miss X had used her rights of appeal and it now considered the matter closed.
 49. The Council apologised for the delay in responding to Miss X's complaints and offered her £50 to recognise the time and trouble she was caused by this.
 50. We asked the Council how it assessed the nearest college to Miss X and the level of Y's course and what information was available to Miss X to see this for herself. The Council pointed to the information contained within its policy. It explained Y's college was further than the nearest college offering his course based on its approved QGIS system. It also explained it believed a SEND manager rang the college to discuss the course level, but it did not have a written record to evidence this and the SEND manager has since retired.
 51. We also asked the Council for a chronology of its complaint handling which it provided. On reviewing the complaint process for Miss X, the Council agreed there were too many delays and its communication was not of an acceptable standard. The Council said it had flagged this with the appropriate officer to be reviewed and learned from. The Council apologised to Miss X and raised its previous offer of £50 to £300 to recognise the poor standard of handling her complaints. If the Council has already paid this £300 to Miss X, it can deduct it from the total amount recommended in paragraph 67 below.
 52. We also spoke to Miss X. Miss X said she did not understand why there was an issue with the course levels. Miss X said Y was moving from school to college, so she assumed the course was at a higher level and was not given any information to think otherwise.
 53. Miss X also said she could not understand why the Council had chosen to disregard her evidence in relation to the distances to each college. Miss X explained not knowing how the Council's policy would apply to Y's situation meant she was deprived of the ability to make an informed choice on which college he should attend.

Conclusions

54. The Ombudsman is not an appeal body. This means we do not take a second look at a decision to decide if it was right or wrong. Instead, we look at the processes a council followed to make its decision. If we consider it followed those processes correctly, we cannot question whether the decision was right or wrong, regardless of whether a complainant disagrees with it.
55. We have not considered whether Y is eligible for funded transport. We have simply considered whether the Council followed the right process when coming to that decision and when the appeal was considered.
56. Although the Council publishes its transport policy within its Local Offer, it did not discuss this with Miss X during the EHCP discussions. This is fault.
57. Miss X and Y were not aware of how Y's college choice would affect transport provision before deciding on this and it was not explained to them. This caused an injustice as it meant they lost the opportunity to make an informed decision on which college, or course, Y should be moving onto.
58. The Council's policy explains it calculates distances using a system called QGIS but it does not explain what this is, or how parents can use it for themselves. The Council is entitled to define which measurement system will be used but it should inform parents they can contact the Council to check and compare school distances.
59. The policy also does not make it clear to parents or young people how they can establish which level courses are at. It references progression through levels but does not give any indication as to which courses are at each level. This makes it difficult for applicants, like Miss X and Y, to know with any certainty if their chosen course is at a higher level even if they are moving onto further education. The Council should inform parents they can contact the Council about how to check suitability of the course level.
60. The Council's policy recommends applicants check their eligibility carefully before applying for a course or transport. However, the policy wording makes it difficult for applicants to do this. For these reasons, we find the Council's policy flawed. This amounts to fault.
61. Whilst the Council followed its own policy when considering Miss X's application and appeals, because its policy was flawed we cannot say the decision making was sound. Miss X has suffered an injustice as a result.
62. The Council did not keep Miss X properly informed throughout the appeals process or stick to the timeframe set out in its published policy. This is fault and meant Miss X experienced uncertainty while she awaited answers.
63. There is also fault in the way the Council provided information to Miss X about the outcomes at each stage. The Council's responses were vague and informal, and they lacked consistency in the eligibility criteria that was being relied on. They did not give full details about the outcome of the reviews, how they were conducted, what was considered, or the rationale for the decisions. The responses also failed to explain how Miss X's appeal points were considered or why they were deemed not to apply.
64. The Council has provided a chronology of complaint handling. This shows numerous avoidable delays in dealing with Miss X's complaint. The Council is at fault here and this would have created an extended period of uncertainty for Miss X.

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65. The Council issued its Stage 1 complaint response within the timeframe set out in its complaint handling procedure but took a further six months to complete its Stage 2 review. We appreciate it may take longer to investigate particularly complex complaints, but we cannot see any reason why this complaint could not have been answered within the Council's usual timeframe.
66. The Council's chronology shows Miss X had to do a considerable amount of chasing before she received a response. She was put to avoidable time and trouble and this added further to the uncertainty she was experiencing.

Recommendations

67. To remedy the injustice set out above, we recommend the Council within one month of the date of this report:
- apologise to Miss X in writing for the identified fault;
 - pay Miss X £200 to recognise the time and trouble caused to her by the failings in dealing with this complaint;
 - pay Miss X £100 to recognise the avoidable uncertainty she was caused by the failure to keep her properly updated and informed throughout the application and appeals process;
 - remind staff dealing with transport applications and appeals of the importance of providing timely, clear, consistent, and well-reasoned decisions and ensuring decision reasons are recorded; and
 - re-assess Y's transport application and if refused, ensure the decision explains the calculation of school distances and course levels to allow Miss X to then submit an informed appeal. If the Council decides to provide transport, it should also reimburse Miss X for the costs she has incurred to date.
68. Within three months of the date of this report, the Council should:
- revise its post-16 transport policy to make it clear to applicants that they can contact the Council about course levels and to check or compare measures of school distances.
 - review decisions issued for the school year September 2021 where it has refused transport to children with EHCPs under its post 16-transport policy based on distance or course level. It should ensure no transport applications were declined based on exclusions relating to school distance and course levels without any explanation given. If any applications are found, these should be reassessed and if transport then agreed, parents should be offered a remedy for the missed provision. If transport is not agreed, parents should be offered the option to appeal.
69. 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*)
70. The Council has accepted our recommendations and agreed to take the action identified above to remedy the injustice.

Decision

71. We have completed our investigation into this complaint. There was fault by the Council which caused Miss X injustice.