



*Meeting:* **Cabinet**

*Date/Time:* **Monday, 24 April 2023 at 2.00 pm**

*Location:* **Sparkenhoe Committee Room, County Hall, Glenfield**

*Contact:* **Ms. J. Bailey (Tel. 0116 305 2583)**

*Email:* **[jenny.bailey@leics.gov.uk](mailto:jenny.bailey@leics.gov.uk)**

### **Membership**

Mr. N. J. Rushton CC (Chairman)

|                       |                         |
|-----------------------|-------------------------|
| Mr. B. L. Pain CC     | Mrs H. L. Richardson CC |
| Mrs D. Taylor CC      | Mrs. P. Posnett MBE CC  |
| Mrs. C. M. Radford CC | Mr. R. J. Shepherd CC   |
| Mr. O. O'Shea JP CC   | Mr. P. Bedford CC       |
| Mr. L. Breckon JP CC  |                         |

### **URGENT ITEM**

| <u>Item</u>   | <u>Report by</u>   |                |
|---|--|----------------|
| 12. Local Government And Social Care Ombudsman Report Regarding Post-16 Special Education Transport | Director of Law and Governance and Director of Environment and Transport | (Pages 3 - 26) |



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**CABINET – 24 APRIL 2023**

**LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN REPORT  
REGARDING POST-16 SPECIAL EDUCATION TRANSPORT**

**REPORT OF THE DIRECTOR OF LAW AND GOVERNANCE AND  
THE DIRECTOR OF ENVIRONMENT AND TRANSPORT**

**PART A**

**Purpose of the Report**

1. The purpose of this report is to advise the Cabinet of a report of the Local Government and Social Care Ombudsman (LGSCO) in relation to the investigation of a complaint against the County Council as required by the relevant legislation where the LGSCO intends to issue his findings in a public report.
2. The complaint refers to the Council's duties to provide home to school travel assistance for eligible students under Education Act 1996. The LGSCO found fault with the Council which caused injustice to the complainant in the case. The LGSCO Report is attached to this report as Appendix A.

**Recommendations**

3. It is recommended that:
  - a) The public Report of the Local Government and Social Care Ombudsman (LGSCO) be noted;
  - b) The Director of Environment and Transport be required to implement the recommendations of the LGSCO as set out in paragraphs 52-53 of the LGSCO Report.

**Reasons for Recommendations**

4. To bring to the attention of the Cabinet the facts of the case and to explain the various actions which the Council is taking in light of the Ombudsman's findings.
5. When a public report is issued by the LGSCO there is a statutory requirement that it is 'laid before the authority concerned' and there is an obligation for the Council to report back to the LGSCO to confirm this action has been taken.

### **Timetable for Decisions (including Scrutiny)**

6. A report on complaints, including complaints to the LGSCO, and outcomes is made to the Corporate Governance Committee annually and the outcome of this report will form part of the next annual report to that Committee.
7. The LGSCO requires the Council to confirm the action that it has taken or proposes to take within three months of the date of the Report.

### **Policy Framework and Previous Decisions**

8. Local Authorities have a statutory duty to publish a transport policy setting out the travel options they feel necessary to enable attendance at education or training for students aged 5 to 19.
9. The Council has a separate SEN transport policy for learners aged 16 to 19 which provides for a Personal Transport Budget (PTB) being the default provision for learners of this age.

### **Resource Implications**

10. An Action Plan has been developed to address the implications of the LGSCO recommendations and it has been appended to this report (Appendix B).
11. The Director of Corporate Resources has been consulted on this report.

### **Circulation under the Local Issues Alert Procedure**

None.

### **Officers to Contact**

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## **PART B**

### **Background**

#### **The Complaint**

12. The complainant's son is now 18 years old. He has attended the same special needs school for many years as it caters for children from 4 to 19 years. The Council provided home to school transport for the student whilst of statutory school age.
13. The complainant applied for home to school transport to continue for her son from September 2021; the application was submitted in February 2021. Her son was staying at the same school and was in the post-16 part of the school.
14. The application was first considered in early April 2021 but was not progressed due to a lack of mandatory information. After receiving the necessary information, a decision was reached in June 2021 and the parent was offered a Personal Transport Budget (PTB) to cover school transport costs herself directly.
15. The parent contacted the Council in July 2021 for advice regarding how the PTB could be used and concluded it was unsuitable due to the complexity of her son's needs. She was advised of her right to appeal and how the process worked. In August 2021 the Council rejected the appeal for traditional taxi-based provision at stage one. The parent proceeded to stage two of the appeal process.
16. The stage two appeal took place in October 2021. The appeal panel upheld the appeal, and the parent was informed of this decision on the same day. The Council began providing transport in January 2022 and the parent requested reimbursement for the interim payments to that date. The Council responded advising it did not reimburse travel costs incurred during the period of transport appeals. At this point, the matter was also referred as a formal complaint to the Ombudsman.

#### **The LGSCO Review**

17. The review focused on five key aspects of the case:
  - 1) The application process was found to have caused an avoidable two-month delay in assessing the application.
  - 2) The appeal process was found at fault due to the website information making it difficult for parents to find out how to appeal and requests for further information from the parent being unnecessary.
  - 3) The delay of three months in providing transport post-appeal was judged unacceptably long, especially as no alternative provision was put in place. The review also rejected the arguments regarding the Council's refusal to back-date the cost of provision to the date of the successful appeal.

- 4) The delay in the process was found to mean that young people with disabilities or an Education Health and Care Plan (EHCP) are placed at a disadvantage compared to others.
- 5) The delays in the process were found to have caused the parent injustice due to the lost opportunity to have the appeal heard and transport arranged earlier and avoidable distress.

### The LGSCO Recommendations

18. LGSCO recommended that to remedy the injustice caused to the complainant the Council should:
  - 1) Apologise to the parent for the identified fault and the injustice this caused.
  - 2) Reimburse the costs incurred in paying for taxis for the Autumn term minus the PTB payments made and the required parental contribution subject to provision of evidence of the costs being provided.
  - 3) Pay an additional £500 to recognise the avoidable distress the Council's poor handling of the application and appeal caused her in the form of frustration, uncertainty, stress, and worry.
  
19. To resolve the broader issues highlighted, the Council should:
  - 1) Ensure the information it provides to transport applicants on its website, emails and letters is accurate. This includes information on how long it will take to consider applications and how quickly it will put in place transport following a successful appeal.
  - 2) Consider providing information about the appeals process in relation to Special Educational Needs and Disability (SEND) transport in the SEND transport policy and/or post-16 transport policy statement policy rather than requiring parents of SEND children to cross-refer to the mainstream policy for this information.
  - 3) Consider undertaking an initial triage of basic information on transport applications to ensure issues with, for example, names or missing information may be identified and dealt with promptly.
  - 4) Ensure that appeals are accepted even if they are completed using the wrong form if the essential information is provided.
  - 5) Devise a system whereby applications for children with an EHCP, where a school is not yet confirmed or the EHCP is not yet finalised, are not unfairly disadvantaged.
  - 6) Provide the LGSCO with information about the outcomes of the Council's own review of the points raised by this report.
  - 7) Meet the costs of transport if this is being arranged and paid for by parents where it is unable to put in place transport after a successful transport appeal. It may take around four weeks to arrange suitable transport provision. However, when this is not possible, the Council should discuss with the family to agree an acceptable solution, including - where necessary - full reimbursement of agreed and evidenced transport costs incurred by the family.

## The Council's Response

### Context

20. It should be noted that the period in question was the first year of the implementation of a new post-16 transport policy and as a result, the Council experienced significantly higher work volumes than previously. In response, the Council invested in two new support roles to meet demand. Additional mitigation included monthly payments of a PTB during the appeal period.
21. During the period, 179 first stage appeals and 33 second stage appeals were processed, significantly more than in other years. The Covid-19 pandemic was also affecting delivery with 75 contract terminations during the period, 33% more than in the same period in 2020, and the complexity of needs of the student severely restricted vehicle supply from the market. There were also no other referrals escalated to the LGSCO regarding the service at this time.
22. In this context, the case should be seen as exceptional.

### The appeals process

23. Regarding the lack of time to fully consider applications and then hear and consider appeals against transport decisions reached late in the February to August window, the Council had not anticipated that some EHCPs would not be finalised until late in the period. Transport provision for 16 to 19 year olds is discretionary and a PTB is the standard offer with the appeals process being the mechanism to challenge this standard offer. The decision of the appeal is the point at which any different provision is agreed, and there is no retrospective entitlement following an appeal panel decision. To confirm, there were 26 appeals that were fully completed before the beginning of the school year in September 2021 and 15 (nearly 60%) of these were upheld.

### The delay in putting transport in place following the successful appeal in October 2021

24. Putting in place transport following the successful appeal was a priority, but the contextual information referred to above were factors which militated against this on this occasion. Additionally, demand for wheelchair accessible vehicles is high making it more difficult to arrange this provision on occasion.
25. SEN transport has been identified as Council's priority for improvement and a consultant has been appointed to review Council's system of transport delivery and is putting in place both long and short-term actions to bring about improvements. In addition, the above example should be seen within the national SEN transport funding crisis in which the Council is pro-actively leading national dialogue via a local authority joint working group across Transport and Childrens services.

## The Council's Response to the final Report

26. The Council has accepted the recommendations set out in the Report and has already started work developing an Action Plan to address the recommendations. The Council has also formally apologised to the complainant and will reimburse her losses as recommended. It is anticipated that all actions will be completed within the stipulated timescales.

## Legal Implications

27. The Council is under a statutory duty to prepare a transport policy statement specifying the arrangements for the provision of transport for post-16 students. This must include the arrangements for financial assistance in respect of reasonable travelling expenses and there are various requirements in relation to publication of the arrangements<sup>1</sup>. The statement has to also address the arrangements for facilitating attendance of disabled students. The policy statement has been subject to judicial consideration by the High Court and Court of Appeal<sup>2</sup> and has been found to be lawful and sound.
28. Section 31(2) of the Local Government Act 1974 requires the Council to lay the LGSCO report before elected members for consideration.
29. It is expected and usual practice for the Council to comply with all recommendations of the LGSCO. In this instance, the Council fully accepted the findings and considers the recommendations to be fair and reasonable.
30. If the LGSCO is not content with the approach that the Council has adopted, he may issue a further report setting out that he is not satisfied with the action of the Council and he may make further recommendations.
31. Following the issuing of a public report, there are also various requirements in relation to publicity and as with most LGSCO reports these are publicly available documents. The LGSCO requires that the Council publishes a notice in the local press and also shares the final report with the Cabinet. As a courtesy, the report is also shared with the Chair and Spokespersons of the Corporate Governance Committee as the Council's body with oversight of complaints and the work of the LGSCO.

## Equality Implications

32. The report highlights an issue in relation to how the timing of the process impacts on students with a disability and the Council will carefully consider how to address this as part of the review following the Ombudsman's Report in this case.

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<sup>1</sup> s509AA Education Act 1996

<sup>2</sup> Court of Appeal (Civil Division) [2020] EWCA Civ 502

### **Human Rights Implications**

33. There is a general requirement that no person shall be denied a right to education; that right does not extend to the right to the provision of transport and is further qualified to enable the Local Authority to make practical objective decisions on the allocation of resources. The issue of the prohibition of discrimination in the enjoyment of the right to education was considered by the High Court and Court of Appeal in the Judicial Review of the SEN transport policy in 2021 and the Court of Appeal confirmed that the policy is not discriminatory as (1) it strikes a fair balance between the rights of post-16 students and the general public interest in reducing expenditure; and (2) the court should be slow to intervene in a public authority's decision about the allocation of scarce resources given that decisions of this kind involved 'difficult choices in straitened financial circumstances'.

### **Background Papers**

Department for Education: Post-16 transport and travel support to education and training Statutory guidance for local authorities – <https://bit.ly/2URgks9>

Department for Education: Home to school travel and transport guidance - Statutory guidance for local authorities - <https://bit.ly/2TOhrs1>

### **Appendices**

Appendix A - Report of the Local Government and Social Care Ombudsman

Appendix B - Action Plan

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

**Investigation into a complaint about  
Leicestershire County Council  
(reference number: 21 018 756)**

**6 March 2023**

## The Ombudsman's role

For almost 50 years we have independently and impartially investigated complaints about councils and other organisations in our jurisdiction. If we decide to investigate, we look at whether organisations have made decisions the right way. Where we find fault has caused injustice, we can recommend actions to put things right, which are proportionate, appropriate and reasonable based on all the facts of the complaint. We can also identify service improvements so similar problems don't happen again. Our service is free.

We cannot force organisations to follow our recommendations, but they almost always do. Some of the things we might ask an organisation to do are:

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

We publish public interest reports to raise awareness of significant issues, encourage scrutiny of local services and hold organisations to account.

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

|       |                 |
|-------|-----------------|
| Mrs B | The complainant |
| C     | Her son         |

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## Report summary

### Education and Children's Services - transport

Ms B complained that Leicestershire County Council delayed considering her application for school transport to enable her disabled son to attend his post-16 educational placement. She says this in turn delayed her right of appeal and the subsequent provision of transport. As a result Ms B had to pay for her son's transport to school even after the Council agreed it would put suitable transport in place for him following a successful appeal.

### 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*)

To remedy the injustice caused to Ms B the Council should:

- apologise to Ms B for the identified fault and the injustice this caused her;
- reimburse the costs Ms B incurred in paying for taxis for the Autumn term minus the Personal Transport Budget (PTB) payments made and the required parental contribution. Ms B will need to provide evidence of the costs to the Council; and
- pay Ms B an additional £500 to recognise the avoidable distress the Council's poor handling of her application and appeal caused her in the form of frustration, uncertainty, stress and worry.

To resolve the broader issues this investigation has highlighted the Council should:

- ensure the information it provides to transport applicants on its website, emails and letters is accurate. This includes information on how long it will take to consider applications and how quickly it will put in place transport following a successful appeal;
- consider providing information about the appeals process in relation to Special Educational Needs and Disability (SEND) transport in the SEND transport policy and/or post-16 transport policy statement policy rather than requiring parents of SEND children to cross refer to the mainstream policy for this information;
- consider undertaking an initial triage of basic information on transport applications to ensure issues with, for example, names or missing information, may be identified and dealt with promptly;
- ensure that appeals are accepted even if they are completed using the wrong form if the essential information is provided;

- devise a system whereby applications for children with an EHC plan where a school is not yet confirmed or the EHC plan is not yet finalised are not unfairly disadvantaged;
- provide us with information about the outcomes of the Council's own review of the points raised by this report; and
- meet the costs of transport if this is being arranged and paid for by parents where it is unable to put in place transport after a successful transport appeal. We understand this may take around four weeks to arrange suitable transport provision. However, when this is not possible, the Council should discuss with the family to agree an acceptable solution, including - where necessary – full reimbursement of agreed and evidenced transport costs incurred by the family.

## The complaint

1. Ms B says Leicestershire County Council failed to properly consider her request for reimbursement of home to school travel costs of £7,250. Ms B says she wrongly incurred these costs during the Autumn school term in 2021 because of the Council's poor handling of her application for transport and of her subsequent appeal against this decision. Specifically, she says the Council failed to:
  - reach a decision on her application for transport sufficiently early to enable her to complete the appeals process before the beginning of the Autumn school term;
  - respond to her requests for information promptly which led to delays in her being in a position to submit an appeal more quickly;
  - ensure she could access appropriate transport to enable her disabled son to attend school between September and October 2021 when a Personal Transport Budget awarded was not suitable to her son's needs; and
  - make suitable provision between October 2021 and January 2022 following a successful appeal for transport provision in early October 2021.
2. The injustice Ms B claims is that she had to pay for suitable transport when she should not have needed to and she has been caused avoidable stress and time and trouble in having to chase up the Council for the provision to be made after the successful appeal.

## 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 law and Council policies related to transport provision and special needs

4. Councils have a duty to publish a transport policy statement setting out the transport arrangements they consider necessary to facilitate attendance at education or training and the financial help available for learners of sixth form age (age 16 to 19). Arrangements may include a concessionary fares scheme, a bus pass, a mileage allowance or provision of actual transport. Parents may be asked to contribute to these costs. The Council's policy must include arrangements for learners with special educational needs and disabilities.
5. A child with special educational needs may have an EHC plan. This sets out the child's needs and what arrangements should be made to meet them and names the school the child will attend.
6. The Council has several policies related to the provision of school transport. These include:
  - mainstream home to school/college transport policy;
  - SEND home to school/college transport policy; and
  - post-16 transport policy statement (mainstream and SEND).

7. The Council's post-16 transport policy statement confirms the standard offer for transport for students aged between 16 and 19 is a Personal Transport Budget (PTB). Paragraph 7.3 of the Council's Special Educational Needs Home to School/College Transport Policy states "*Transport assistance for 16-19 year olds will **only** be provided via a Personal Transport Budget (PTB) direct payment ie. Not via taxis or Council fleet minibuses, although requests for traditional transport methods will be considered on a case by case basis*". The policy also confirms that students aged 16 to 19 pay £660 a year for access to such transport unless they are on a low income when a lower contribution is payable.
8. The application form for SEN transport covers children and young people of all ages. It is a standard format and asks questions about the child's mobility, medical conditions and asks if there is any reason why the child is unable to walk three miles to school if accompanied. It also asks for information about wheelchair usage and the child's behaviour.
9. In the year Ms B applied the Council accepted applications for home to school transport from February to August. Its policy states "*It will take up to 15 working days from the date that we receive the form to organise transport assistance (this can be up to 6 weeks in busy periods eg. the start of a new academic year)*". It also states "*If you submit your application for transport assistance after the published deadlines and/or if you apply for a school that is later not named in your finalised EHCP, then your application may be delayed and we will not be able to guarantee the transport assistance for the start of the academic year*".

### **Appeals and complaints processes**

10. The Council's policy states that parents or students may appeal if they are unhappy with the type of transport provision offered. The Transport appeals page on the Council's website includes a section on appealing about an offer of a PTB. It states that applicants may appeal against an offer of a PTB if "you cannot facilitate your child's attendance at school/college using a PTB and require traditional transport instead. In this case we need to consider your individual circumstances. Please complete the online PTB appeal form...". The PTB appeal form asks applicants to provide as much detail as possible about the child, family circumstances etc and why the case is so exceptional that traditional transport is needed.
11. The Council's school transport appeals process is set out in its mainstream travel policy document. This states the Council has a two-stage appeals process.
  - Stage 1 appeals should be submitted within 20 working days of the receipt of the decision on the transport application. The appeal must be made in writing and provide the reasons the decision should be reviewed and give details of circumstances the appellant believes should be taken into account in the review. The Council will provide the decision on the review request within 20 working days of receipt of the request for review.
  - Stage 2 appeals must be made within 20 working days of receipt of the stage 1 decision and an independent appeal panel will consider written and verbal representations from the parents and council officers within 40 working days of receipt of the appeal.
12. The Council's complaints procedure says that a complaint submitted will be acknowledged within 3 working days and a resolution reached within 10 weeks of receipt where possible. It says that if the complainant is dissatisfied with the findings the complainant may complain to us.

### **The Equality Act 2010**

13. The Equality Act 2010 protects the rights of individuals and supports equality of opportunity for all. It offers protection in employment, education, the provision of goods and services, housing, transport and the carrying out of public functions.
14. The Equality Act makes it unlawful for organisations carrying out public functions to discriminate on any of the nine protected characteristics listed in the Equality Act 2010. They must also have regard to the general duties aimed at eliminating discrimination under the Public Sector Equality Duty. The '[protected characteristics](#)' referred to in the Act include disability.
15. Indirect discrimination may occur when a service provider applies an apparently neutral provision, criterion or practice which puts persons sharing a protected characteristic at a particular disadvantage.
16. We cannot decide if an organisation has breached the Equality Act as this can only be done by the courts. But we can make decisions about whether an organisation has properly taken account of an individual's rights in its treatment of them.

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

17. We produced this report after examining relevant documents.
18. 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.

### **What happened**

19. Ms B's son, C, is now 18 years old. He has attended the same special needs school for many years as it caters for children from 4 to 19 years. C is blind, is a wheelchair user and is non-verbal. Ms B says he needs help with all daily activities. C has an EHC plan that names the school he attends.
20. Ms B confirms the Council has always provided home to school transport for C.

### **Events in 2021**

21. Ms B applied for home to school transport to continue for her son from September 2021. Ms B submitted her application for this in February 2021. C was staying at the same school and was in the post-16 part of the school.
22. The Council first considered the application in early April. It says at that time it was unable to progress the application. The Council is unsure now why this was but says the reason would have been it could not confirm either the EHC plan or C's school placement. Ms B says this is not correct as C was staying at the same school and there had been no discussions about changing this or the EHC plan at that time. She does say however that the Council contacted her in June to check C's name. C's last name was changed in 2020. Ms B confirmed his name as that she had provided on the application form: his new name. The rest of his personal details had not changed.
23. In June 2021, after Ms B confirmed C's name, the Council reached a decision on the transport application. The Council says the reason this decision was not reached more quickly was:

- from February each year it receives around 1,500 applications for transport for the academic year starting in September. It processes these between February and August. It says that the timescales given in its literature that states transport applications will be determined in 15 working days (or up to 6 weeks) do not apply to applications received during the February to August period. It accepts this discrepancy is not made clear to parents. The Council's current online information for parents still states this;
  - it tries to consider applications in the order they are received but this is not always possible, for example when the Council is waiting for confirmation of a school place in an EHC plan; and
  - whilst it initially considered Ms B's application in early April, it was not able to confirm C's educational placement at that time and was not able to do so until June.
24. The Council told Ms B it decided C qualified for home to school transport and said that as he was in post-16 education this would be provided as a Personal Transport Budget (PTB). The Council told Ms B that if she believed a PTB was not suitable for C she would need to formally appeal within 20 working days. The Council also said that if any appeal concluded that traditional transport was the only option to ensure a child's attendance at school or college this would "...be arranged as soon as possible after the appeal outcome".
25. In early July Ms B emailed the Council to ask how to use the PTB and how she could arrange a taxi for C. The Council replied around two weeks later providing a web link on how to use PTBs and telling her to contact a taxi company to make the arrangements herself. It appears she then submitted an appeal form but mistakenly completed a stage 2 request rather than a stage 1 appeal form. In late July the Council told her this and sent her a link to a stage 1 form. Ms B completed the correct form and submitted the stage 1 appeal form in late July. In mid-August the Council confirmed it received this.
26. On her stage 1 appeal form Ms B said she needed specialist provision that she could not obtain using a PTB because:
- C is blind and a wheelchair user who needs help to use his wheelchair;
  - C needs a wheelchair adapted vehicle because he remains in his wheelchair in the transport;
  - C cannot share transport with another child; and
  - Ms B had no-one else to help with transport and in addition to caring for C is also a carer for her disabled partner.
27. The Council rejected the stage 1 appeal in late August stating Ms B did not successfully argue that traditional transport provision was the only way C could get to and from school. The stage 1 outcome letter advised Ms B that she could pursue the matter by asking for her appeal to be considered at stage 2 of the process. Ms B submitted an appeal at stage 2 of the process promptly in early September.
28. Ms B's appeal at stage 2 stated:
- C has multiple and complex disabilities and uses a wheelchair. He needs help with all activities;
  - he is blind, epileptic requiring constant supervision to administer medication in case of a seizure;

- 
- C's father/Ms B's partner is disabled, a wheelchair user and has other medical needs. Ms B is his carer;
  - the stress of the transport arrangements for C had caused her significant distress and led to her being prescribed medication for anxiety. She also detailed other health conditions that affected her ability to transport C by car;
  - she was paying £125 a day for transport and an escort to take and collect C from school and she had been unable to secure taxis to coincide with school start and end times and this resulted in C missing around 10 hours of school a week. This affected his social development and meant he was missing out on specialist provision in school; and
  - she provided a letter of support from C's doctor.
29. The stage 2 appeal hearing took place on 11 October 2021. The appeal panel upheld the appeal. The Clerk to the appeal panel wrote to Ms B on the same day to tell her this.
30. Ms B emailed the Council in late October asking when the transport agreed at the appeal would be put in place. In early November the Council responded to this query stating "*The application was received after the deadline, as a result it can and may take up to six weeks for us to procure transport...*". It appears that instead of putting the transport in place "*as soon as possible after the appeal outcome*" as the June letter had stated it would, the Council in fact treated the matter as a fresh application for transport. Ms B chased this up again in December telling the Council she was paying over £100 a day for her son's taxis to and from school. It appears she did not receive a response.
31. The Council began providing transport for C at the beginning of the Spring term in January 2022.
32. On 10 January Ms B emailed the Council to say that she had paid £7,250 for C's home to school transport in the Autumn term. She said she was aware that she had to contribute £660 a year and that she had received some PTB payments. However, she said the amount she had paid was significantly higher than the £660 she had to contribute and the PTBs provided, so she asked how she could arrange for the difference to be repaid to her. This email was logged as a complaint and the Council told her it would be considered under the Council's complaints procedure.
33. The Council provided its response in early March. This response stated:
- the Council did not reimburse the costs of transport arrangements made by parents during the period of the transport appeal;
  - Ms B waited 6 weeks after the transport decision was issued in June 2021 to appeal at stage 1 and 2 weeks after the decision of the stage 1 appeal to ask for it to be considered at stage 2 so could have done so earlier and, had she done so, could have completed the appeals process before the beginning of the school year;
  - PTBs of £975 had been made during the Autumn term;
  - it agreed to waive £400 of the parental contribution for the rest of the school year (the £660 is paid at intervals throughout the school year);
  - it would not reimburse the travel costs accrued above the PTB limit for the Autumn term; and
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- the Council's complaints process was completed so Ms B could complain to us if she wanted to pursue the matter further.

### **The Council's comments on the appeals process**

34. The Council has provided comments in response to concerns we expressed about the lack of time to fully consider applications and then hear and consider appeals against transport decisions reached late in the February to August window. The Council says:
- it had not anticipated that some EHC plans would not be finalised until late in the February to August window;
  - transport provision for 16 to 19 years olds is discretionary and a PTB is the standard offer with the appeals process being the mechanism to challenge this standard offer;
  - the decision of the appeal is the point at which any different provision is agreed; and
  - there is no retrospective entitlement following an appeal panel decision.
35. The Council confirms that there were 26 appeals that were fully completed before the beginning of the school year in September 2021. Fifteen (nearly 60%) of these were upheld.

### **The Council's comments about the delay in putting transport in place following the successful appeal in October 2021**

36. The Council says putting in place transport for C following the successful appeal would have been a priority for the Council. But unfortunately there were even higher priorities at the time of Ms B's successful appeal. These included children receiving taxi provision but who were affected by both the termination and breaches of existing transport contracts. The Council says between October 2021 and January 2022 the Council dealt with 75 terminations of contract which was more than three times the number during the same period in 2020. Additionally, C needs a wheelchair accessible vehicle which are in high demand. The Council has apologised that it was not able to put C's transport in place more quickly.
37. The Council has not reimbursed Ms B for the transport costs she incurred during the Autumn term either before or after the successful appeal. The Council says it has not agreed to this request because:
- its usual approach is to refuse retrospective claims for transport costs;
  - Ms B did not request reimbursement until January 2022 which was after she had finished paying for this and did not allow the Council to consider or agree to this before she paid the costs;
  - Ms B has not provided evidence of the transport costs she paid; and
  - Ms B received £195 a month towards the cost of transport under the PTB.

### **General comments from the Council on SEN transport**

38. The Council says it identified SEN transport as a priority for improvement because of the complaints it has received about this. It has appointed a consultant to review its system of transport delivery and is putting in place both long and short term action to bring about improvements.

## **Analysis of fault and injustice**

### **The application process**

39. The Council's explanation of why it took until June to reach a decision on Ms B's application for transport is at odds with Ms B's understanding of the reason for this. She submitted her application early in the process and the Council confirms it first considered the application in April. According to Ms B it was not the case that there should have been any confusion over C's school place from September or his EHC plan as nothing was due to change. The Council has not explained why the discrepancy with C's name was not picked up in April. Had it been, the application could have been decided then. We consider there was an avoidable two-month delay in deciding the application and this amounts to fault.
40. The information provided to parents about the speed at which applications will be considered is misleading. It raises parents' expectations that their applications will be considered considerably before they were. This is fault.

### **The appeals process**

41. We consider the information provided by the Council on its website means it is difficult for parents to find out how to appeal against decisions on SEN transport. We recognise that they are told about their right to appeal, and a link was provided to the online appeals form when they receive a decision about transport support. However, it seems the link did not work, which meant parents had to try to find the forms on the Council's website.
42. It was fault the Council asked Ms B to complete a new form for the stage 1 appeal when she had mistakenly completed the stage 2 form. The information was sufficient to have considered it at stage 1 even though it was provided on the wrong form. This delayed the handling of her appeal at stage 1 and amounts to fault.
43. The Council says that had Ms B submitted her appeals at stages 1 and 2 more promptly her appeal would have been completed before the beginning of the school year in September 2021 and so she would not have incurred any costs. We consider this is entirely speculative and in fact unlikely. If Ms B had appealed on the day she received the decision in June, she should have received a decision at stage 1 of the appeals process by around 10 July. Had she then submitted a request at stage 2, the Council's policy requires that her appeal would have been considered within 40 working days which would have been early September after the beginning of the school year.

### **Delay in putting transport in place following the appeal**

44. The Council's letter to Ms B in June said that if it agreed to make transport provision following an appeal it would arrange this as soon as possible. However, it took the Council nearly three months to arrange provision after the appeal was decided in early October. Whilst we recognise the pressure the Council was under at the time, it should have told her about the difficulties it was having and made arrangements to pay for the transport she had arranged. The delay in making provision and in failing to make alternative arrangements following the successful appeal amount to fault.
45. We do not accept the Council's arguments about the reasons it would not backdate the cost of the provision to the date of the successful appeal. The Council would have met the costs if it had put the transport in place promptly after the successful appeal and it was not Ms B's fault the Council had a large number of other cases to resolve at the same time.

### Equalities issues

46. The Council's consideration of applications for post-16 transport fails to take account of any personal circumstances and will only offer a PTB for those whose applications are successful. This means the Council only consider an individual's circumstances if they make an appeal. So it is important that decisions are made sufficiently early to enable parents to complete the two-stage appeals process before the beginning of the school term. The delay in the process means that young people with disabilities are placed at a disadvantage compared to others. It does not appear the Council has taken account of this as part of its policy or practice.
47. In addition, the application and appeals process are inherently poorer for young people with an EHC plan, where a school place is not confirmed promptly. This means their applications cannot be considered early in the process and so they were less likely to be able to complete the appeals process before the beginning of the September term. We consider this also impacts disproportionately on children with special needs who have an EHC plan.

### Injustice

48. Ms B's stage 2 appeal would have been heard two months earlier and upheld in August, had the Council not delayed in deciding her application, and delayed the subsequent appeal process. This means transport would have been in place for the beginning of term. Ms B would then not have incurred transport costs for the Autumn term.
49. The delays caused Ms B injustice; specifically:
- lost opportunity to have the appeal considered earlier because of the complex way in which information is provided to parents, and then by the Council's refusal to accept the initial appeal because it was submitted on the wrong form;
  - lost opportunity to have transport arranged earlier;
  - distress in the form of anxiety and worry caused by the avoidable costs of paying for transport that should have been provided earlier; and
  - avoidable distress and frustration caused by the Council's refusal to consider reimbursing the costs of transport when she complained about this in early 2022.

### Recommendations

50. 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*)
51. When recommending a remedy we seek to remedy the injustice caused as a result of identified fault. Our [guidance on remedies](#) states:
- our key consideration is that, where possible, we will try to put the complainant back in the position they would have been had the fault not occurred;
  - for injustice such as avoidable distress we usually recommend a symbolic payment to acknowledge the impact of the fault as we cannot put the complainant in the position they would have been had the fault not occurred; and
  - distress can include anxiety, uncertainty, lost opportunity and frustration.

52. To remedy the injustice caused to Ms B the Council should:
- apologise to Ms B for the identified fault and the injustice this caused her;
  - reimburse the costs Ms B incurred in paying for taxis for the Autumn term minus the PTB payments made and the required parental contribution. Ms B will need to provide evidence of the costs to the Council; and
  - pay Ms B an additional £500 to recognise the avoidable distress the Council's poor handling of her application and appeal caused her in the form of frustration, uncertainty, stress and worry.
53. To resolve the broader issues this investigation has highlighted the Council should:
- ensure the information it provides to transport applicants on its website, emails and letters is accurate. This includes information on how long it will take to consider applications and how quickly it will put in place transport following a successful appeal;
  - consider providing information about the appeals process in relation to Special Educational Needs and Disability (SEND) transport in the SEND transport policy and/or post-16 transport policy statement policy rather than requiring parents of SEND children to cross refer to the mainstream policy for this information;
  - consider undertaking an initial triage of basic information on transport applications to ensure issues with, for example, names or missing information, may be identified and dealt with promptly;
  - ensure that appeals are accepted even if they are completed using the wrong form if the essential information is provided;
  - devise a system whereby applications for children with an EHC plan where a school is not yet confirmed or the EHC plan is not yet finalised are not unfairly disadvantaged;
  - provide us with information about the outcomes of the Council's own review of the points raised by this report; and
  - meet the costs of transport if this is being arranged and paid for by parents where it is unable to put in place transport after a successful transport appeal. We understand this may take around four weeks to arrange suitable transport provision. However, when this is not possible, the Council should discuss with the family to agree an acceptable solution, including - where necessary – full reimbursement of agreed and evidenced transport costs incurred by the family.

### **Final decision**

54. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Ms B and C. The Council should take the action identified in paragraphs 52 and 53 to remedy that injustice.

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## Action Plan

The Ombudsman report made a number of recommendations to resolve the broader issues highlighted by the investigation. These are outlined below with the action taken or proposed at this stage.

- *ensure the information it provides to transport applicants on its website, emails and letters is accurate. This includes information on how long it will take to consider applications and how quickly it will put in place transport following a successful appeal;*

The general information available on the Council's website has been updated to reflect more accurately the timelines parents can expect for Special Educational Needs (SEN) transport assistance.

The individual information provided to parents when they make an application has been automated, so that they receive an update email (and text message if requested) at each stage of their application. The stages of an application for transport assistance include assessing eligibility, awaiting further information, assessing transport requirements, arranging transport assistance, transport assistance offered. Parents are provided with relevant contact points at each of these stages should there be any concerns or queries.

- *consider providing information about the appeals process in relation to Special Educational Needs and Disability (SEND) transport in the SEND transport policy and/or post-16 transport policy statement policy rather than requiring parents of SEND children to cross refer to the mainstream policy for this information;*

Information regarding the appeals process is scheduled to be added to the SEN Home to School Transport Policy and will be re-published on the Council's website by the end of April.

- *consider undertaking an initial triage of basic information on transport applications to ensure issues with, for example, names or missing information, may be identified and dealt with promptly;*

The service is considering how best to apply this to working practice to ensure it is an effective process.

- *ensure that appeals are accepted even if they are completed using the wrong form if the essential information is provided;*

The Personal Transport Budget (PTB) appeal form contains a specific question and answer set that allows the appeal to be considered against a scoring matrix. An appeal submitted on the incorrect form will be accepted, however, it is always recommended that the correct form is used to avoid missing information at the first stage of appeal and subsequent delay or frustration.

- *devise a system whereby applications for children with an EHC plan where a school is not yet confirmed or the EHC plan is not yet finalised are not unfairly disadvantaged;*

This requires collaboration between departmental areas. A number of workstreams are currently in progress with Transformation Unit and other project groups to improve links between the SEN and Transport service areas, with a wider feedback piece being developed.

- *provide us with information about the outcomes of the Council's own review of the points raised by this report; and*

A full feedback report is in progress for issuing back to the Ombudsman.

- *meet the costs of transport if this is being arranged and paid for by parents where it is unable to put in place transport after a successful transport appeal. We understand this may take around four weeks to arrange suitable transport provision. However, when this is not possible, the Council should discuss with the family to agree an acceptable solution, including - where necessary – full reimbursement of agreed and evidenced transport costs incurred by the family.*

The Council has committed to this and will achieve it at service level through ownership of task (senior officer) and weekly reporting on all cases where transport is awarded at appeal.