

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

**Investigation into a complaint against
Warwickshire County Council
(reference number: 16 006 379)**

11 August 2017

The Ombudsman's role

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

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

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

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

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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 and Mrs X – foster carers for the Council and the complainants

Y – a foster child Mr and Mrs X cared for from 2015 to 2016

Report summary

Council's fostering services and school transport

The Council refused to provide free school transport for Mr and Mrs X to take a child they fostered to the school Y attended. Y's school was beyond the statutory walking distance and the Council had insisted Y remain at this school during Y's foster placement. Over the year the child lived with them, Mr and Mrs X travelled 3,045 miles taking Y to school. The Council wrongly insisted foster carers must use the child's fostering allowance to provide transport to school when they were eligible for free school transport. This was against the requirements set out in the Education Act 1996 and the Council's own policy. The Council's policy and practice was confusing and contradictory. Other foster carers in the Council's area may also have been affected by these faults.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice to Mr and Mrs X the Council should:

- apologise to Mr and Mrs X for the faults we have identified; and
- reimburse them the travel allowance for the period they transported Y to and from Y's school at a rate of 40p per mile.

To remedy the injustice to others the Council should:

- review its Foster Care Finance Handbook, school transport policy and its procedures to ensure looked after children who are 'eligible' children receive the free home to school transport they are entitled to;
- write to all its foster carers inviting them to complain to the Council if they believe they were wrongly denied free home to school transport for their foster children who were 'eligible' from 2015 onwards. The Council should consider each case on its merits, explain its decision to the foster carer in writing and signpost those carers who remain dissatisfied to us; and
- ensure foster carers receive clear information about allowances and expenses payable and how to access them before the child is placed to enable them to make informed decisions.

The Council has accepted our recommendations.

Introduction

1. Mr and Mrs X, who are foster carers for the Council, complain the Council failed to provide them with appropriate financial support to take a looked after child to Y's school in 2015 and 2016. The child's school was 4.6 miles from their home. The Council said Mr and Mrs X should pay for the transport out of the fostering allowance it paid them to care for the child.
2. Mr and Mrs X say the Council has left them with out of pocket expenses when they expected to receive a mileage rate. If so, they would have received £1,218.

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**)
4. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (Local Government Act 1974, section 26D and 34E, as amended)
5. 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)

The law on school transport

6. Section 508B(1) of the Education Act 1996 (the Act) says when a child is an 'eligible' child councils must make:

*"such travel arrangements as they consider necessary in order to secure that suitable home to school travel arrangements, for the purpose of facilitating the child's attendance at the relevant educational establishment in relation to him, are made and **provided free of charge in relation to the child** [our emphasis]"*.

7. Schedule 35B of the Act explains an 'eligible' child under section 508B is a child of compulsory school age:
 - a. who is a registered pupil at a qualifying school which is not within walking distance of their home. This distance is two miles for children under the age of eight and three miles for those aged eight and over.
 - b. for whom the local council has not made suitable arrangements for the child to become a registered pupil at a qualifying school nearer to their home.

The Council's Foster Care Finance Handbook 2015

8. Of relevance to this case, the Council's Foster Care Finance Handbook states:

1. HOW THE WEEKLY ALLOWANCES SHOULD BE USED

1.1 Maintenance

This payment is to contribute to food, light, transport, general living costs and wear and tear on everyday household items e.g. bedding and decoration for the child's bedroom.

1.2 Education Transport

All applications for Education Transport have to be made by the child's allocated social worker and authorised by the operations manager.

....b) For Looked After children from pre-reception to 19 years in full time education, the Education Department will fund the transport costs regardless of whether they are attending a Warwickshire school or a school outside of the county as long as the distance criteria are met.

1.4 Combined allowance

....The clothing and Personal Allowance should be considered together and administered to meet the child's needs. This could include, although this is not an exhaustive list.... top up transport costs as agreed with the child's social worker....

How we considered this complaint

9. We produced this report after examining relevant files and documents and speaking to the complainants.
10. We gave the complainants and the Council a confidential draft of this report and invited them to comment. We took their comments into account before finalising the report.

Investigation

11. Mr and Mrs X have been foster carers for the Council for many years. Foster carers receive a fostering allowance to pay for the needs of the child and a fostering fee to recognise their professional skills.
12. In 2012 and 2013 the Council wrote to all its foster carers. It said it expected them to meet **all** the costs associated with caring for the child in their care from the fostering allowance they received.
13. In September 2015 the Council asked Mr and Mrs X to care for a young child, Y.
14. The Council's Placement Plan for Y, completed by Y's Social Worker on the day the Council placed Y with Mr and Mrs X, stated:

- a. it had decided to keep Y at Y's original primary school, 4.6 miles from Mr and Mrs X's home. This would provide Y with some stability and contact with an older sibling.
 - b. *"carers are responsible for transporting [Y] to and from school"*.
 - c. *"Has the carer signed the school transport form?" "Yes"*. The Council has since told us this was marked in error but says it shows a discussion about school transport took place with the Social Worker. Mr and Mrs X say the Social Worker completed this section before she gave them the Placement Plan or had any discussion with them about transport.
 - d. *"Finance"* listing certain non-weekly personal allowances such as birthday, festival, holiday and day trips. There was no mention of any additional payments to Mr and Mrs X for home to school travel costs.
15. There are no records of what the Social Worker told Mr and Mrs X about school transport expenses before or at the time of Y's placement in September 2015, apart from the Placement Plan. This Social Worker no longer works for the Council.
 16. Mr and Mrs X recall the Social Worker asked them to transport Y to school. They agreed. They believed it would help Y for them to have regular contact with Y's school. They thought the Social Worker was asking if they would be prepared to take the time and trouble to transport Y to school. They say it was not clear the Council expected them to pay the costs out of Y's fostering allowance which they received to care for Y.
 17. In November 2015 Mr and Mrs X asked the Council to pay them the travel allowance mileage rate for transporting Y to school. Their fostering Social Worker wrote to a senior officer in December 2015 to say she felt the distance Mr and Mrs X were being asked to travel to take Y to school was outside what was expected of them. The Council refused saying it expected foster carers to pay the school transport costs from the child's fostering allowance in all but 'exceptional circumstances'. The Council decided their circumstances were not exceptional.
 18. Mr and Mrs X say they covered 3,045 miles over the year Y lived with them, transporting Y the 10 mile round trip to and from school twice a day. The Council pays a travel allowance at 40p per mile. They believe the Council should therefore have paid them £1,218 and they should not have had to fund this out of the fostering allowance the Council paid them to care for Y.
 19. Mr and Mrs X complained to the Council. In May 2016 the Council's investigation found:
 - a. its Foster Care Finance Handbook allowed foster carers to use part of the child's fostering allowance known as the combined allowance to top up transport costs as agreed by the child's social worker. (The Handbook does not define specific criteria that would qualify carers to use this top up.)
 - b. it had not defined how much mileage a foster carer would need to travel with a child before it was 'exceptional'.

- c. it had insisted foster carers provide school transport from the fostering allowances since 2014. The investigation noted the Manager and Social Workers involved in the case were not aware of this change until late 2015. Even in March 2016, Council Officers were still asking if the Council had a policy on school transport costs for foster carers.
 - d. it failed to set out to Mr and Mrs X that they would have to pay the home to school travel costs out of Y's fostering allowance at the time of placement.
20. The Council's complaint investigation recommended the Council apologise to Mr and Mrs X for failing to consistently share with foster carers and its Social Workers the criteria for paying home to school travel costs. It said the Council should provide guidance on what would constitute an 'exceptional' journey to warrant a mileage allowance.
21. In May 2016 the Council wrote to all its foster carers asking them to volunteer to transport children to school themselves and the Council would cover the costs in order to reduce its school transport budget. In response to our enquiries, the Council says it offers some free school transport to looked after children in some circumstances. It told us none of its foster carers offered to transport their foster children to school.

Conclusions

The Council failed to meet its duty to Y as an 'eligible' child

22. The Council's position is foster carers must pay for all transport, including home to school transport, out of the fostering allowance they receive for the child in all but 'exceptional' circumstances. It fails to give examples of what would constitute an exceptional circumstance or distance.
23. Y was less than 8 years old and attended a school more than two miles from Mr and Mrs X's home. Y's Placement Plan shows the Council insisted Y remain at Y's old school because everyone recognised it was in Y's best interests. As Y lived beyond the statutory walking distance and the Council did not make any arrangements for Y to become a registered pupil at a nearer school Y was an 'eligible' child under Schedule 35B of the Act.
24. As an 'eligible' child Y was entitled to receive home to school transport under section 508B of the Act "*free of charge*". By insisting Mr and Mrs X use money from Y's fostering allowance, which it paid at the same rate as other carers who did not care for 'eligible' children, the Council failed to provide the school transport free of charge.
25. When the Council placed Y with Mr and Mrs X, it decided Y should stay at Y's old school. Y was not expected to walk to school because the school was more than 2 miles from Mr and Mrs X's home. Y was entitled to free transport.
26. The Council said Mr and Mrs X should meet the cost of taking Y to school from Y's maintenance allowance. Maintenance allowance is a payment foster carers receive to meet the needs of the child they care for. The Council does not pay more for children who

are 'eligible' for free transport. After Mr and Mrs X had met the cost of Y's school transport from Y's maintenance allowance, Y had less money than other foster children who go to school closer to their foster homes. The Council has not provided the transport "*free of charge*" as required by the Act. This was fault.

27. The Council should review its school transport arrangements for looked after children and maintenance allowance payments to ensure that 'eligible' children receive free school transport.
28. Section 508B(4)(b) of the Act says councils can only pay parents to provide transport for 'eligible' children if the parents agree to receive a payment rather than the transport. The Council must therefore ensure that foster parents agree to receive a payment for transporting 'eligible' children in their care to school rather than the transport. Foster parents caring for an 'eligible' child should receive a transport payment calculated in the same way as any other parent of an 'eligible' child.
29. The Council must not treat foster carers and their foster children differently from other parents. 'Eligible' foster children must not receive less maintenance allowance than other foster children who attend schools closer to their foster homes.
30. The Council says it, and many other councils, had operated this system of using fostering allowance for school transport to looked after children who were also 'eligible' for free school transport. It says it did so in good faith based on its interpretation of the advice available regarding fostering allowances and what the allowance should be used for. It had believed the advice was that for most children, the school transport costs would be included in the fostering allowances paid by councils for caring for foster children.
31. Councils could allow the fostering allowance to be used to fund school transport costs for looked after children who attend school below the statutory walking distance but where the foster carer has chosen to transport the child to school. We can envisage it is also possible for councils to include a payment for school transport within their fostering allowance for ease of administration, if the foster carer has agreed to accept a mileage allowance. However, to ensure councils provide school transport free of charge (section 508B(1)) to 'eligible' children, they would need to consider the extra costs incurred by the carer. By paying the same rate of fostering allowance to carers, whether or not they care for an 'eligible' child and without consideration of the distances involved, councils would not meet this requirement for the transport to be provided free of charge.
32. The Council accepts our findings. We welcome the Council's response to our investigation. We are issuing this report to highlight the issue to those other councils who may have failed to realise their obligations to provide free school transport to 'eligible' children, regardless of whether they are looked after children.

The Council failed to give Mr and Mrs X sufficient information before placing the child with them

33. Standard 28 of the Fostering Service: National Minimum Standards 2011 says foster carers should receive clear information about allowances and expenses payable and how to access them “before” the child is placed.
34. The Council believed the Placement Plan was clear that Mr and Mrs X would have to transport Y to school at their own expense and would receive no transport allowance. However, Mr and Mrs X say this was not their understanding. They believed they had only agreed to take the time and trouble to transport Y, not to fund it out of the fostering allowance they received to care for Y.
35. There are no contemporaneous notes of what was discussed between Y’s Social Worker and Mr and Mrs X about school transport when Y was placed with them in September 2015, only the Placement Plan. That was fault.
36. Whatever was discussed before the Council placed Y with Mr and Mrs X, it was at fault. It could not insist Mr and Mr X pay for Y’s home to school transport from Y’s fostering allowance as Y was an ‘eligible’ child and must receive this transport free of charge.

The Council’s policy and practice is flawed

37. The Council’s Foster Care Finance Handbook:
 - a. says among other things, the weekly fostering allowance can be used for transport (paragraph 1.1).
 - b. makes a distinction about **school** transport. It says all applications for Education Transport have to be made by the child’s allocated Social Worker and authorised by the Operations Manager (paragraph 1.2(b)).
38. The Council’s Social Worker did not complete an application for ‘education transport’ as stated in paragraph 1.2(b) of its Handbook. The Handbook states the Education Department would fund the transport when the distance criteria were met. Y met the distance criteria as Y’s school was beyond the statutory walking distance and the Council had not made arrangements for Y to attend a nearer school. Therefore, the Council’s Education Department should have met the costs of Y’s school transport.
39. Instead, the Council relied upon the part of its Handbook at paragraph 1.4 which states foster carers should use the combined allowance part of the fostering allowance to meet the child’s needs including “*top up transport costs*”. It has ignored what paragraph 1.2(b) says about education transport.
40. The Handbook and how the Council applied it was not clear to its foster carers and staff. Its practice of refusing to provide free home to school transport to ‘eligible’ children who happen to be foster children does not comply with the obligations under section 508B of the Education Act 1996 or its Handbook.

41. The Council wrote to all foster carers in 2012 and 2013 to say it expected them to meet **all** the costs associated with caring for the child from the fostering allowance they received. The Council's approach of insisting all foster carers fund all school transport is flawed where the children cared for are 'eligible' children.
42. The Council's letter to foster carers in May 2016 shows it did not apply this policy equally to all foster carers. The letter asked foster carers who received free transport to consider asking for a travel allowance instead of the Council providing a vehicle. It shows some foster carers received school transport from the Council and were therefore not required to fund the transport out of the child's fostering allowance. The Council says it tends to provide school transport when carers cannot get two foster children to two different schools. The Council has the **power** under other parts of the Education Act 1996 (section 508C) or could use powers under the Children Act 1989 to provide support to get its looked after children to school under such circumstances. However, this approach fails to address those cases where the foster child is 'eligible' for free school transport by virtue of living beyond the statutory walking distance and so it is under a **duty** to provide free home to school transport.
43. The Council's refusal to fund Mr and Mrs X's school transport costs for Y was fault. It did not comply with the law, the statutory guidance or the Council's Handbook. The Council failed to interpret the law correctly and failed to implement its policy clearly or fairly.
44. The Council accepts its policies and procedures around the provision of school transport for looked after children are problematic. It accepts its internal paperwork and guidance to carers and social workers is confusing and contradictory.

Injustice

45. Over the year Mr and Mrs X cared for Y they travelled 3,045 miles transporting Y to and from school. The Council's failure to provide Y with free school transport has caused them a financial disadvantage. Other foster carers working for the Council may also be affected by these faults.

Decision

46. There was fault by the Council causing an injustice to Mr and Mrs X. Other foster carers in the Council's area may have been affected by the same fault.

Recommendations

47. We recommend within three months of the date of this report the Council:
 - a. apologise to Mr and Mrs X for the faults we have identified; and
 - b. reimburse them the travel allowance for the period they transported Y to and from Y's school at a rate of 40p per mile.

48. As there are faults in the Council's policy and practice that may have disadvantaged other foster carers, we recommend within three months of our final decision the Council:
- a. review its Foster Care Finance Handbook, school transport policy and its procedures to ensure looked after children who are 'eligible' children receive the free home to school transport they are entitled to;
 - b. write to all its foster carers inviting them to complain to the Council if they believe they were wrongly denied free home to school transport for their foster children who were 'eligible' from 2015 onwards. The Council should consider each case on its merits, explain its decision to the foster carer in writing and signpost those carers who remain dissatisfied to us; and
 - c. ensure foster carers receive clear information about allowances and expenses payable and how to access them before the child is placed to enable them to make informed decisions.
49. The Council has accepted our recommendations but says it will take longer than three months to complete the recommendation in paragraph 48a. The Council is to conduct a review of school transport for all children in September 2017. It hopes to have the new school transport policy in place by September 2018. It says until the review it will treat its foster carers in the same way it treats parents in its area. We will monitor the Council's progress against these recommendations until we are satisfied it has completed them.
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 or Cabinet and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)