

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

**Investigation into a complaint about  
Stockton-on-Tees Borough Council  
(reference number: 22 010 732)**

**30 May 2023**

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## 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

Ms X	The complainant
Mr Y	Her son

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## Report summary

### Education and Children's services

Ms X complained the Council refused to cover transport costs for her son, Mr Y, to attend college and delayed considering her appeal, causing financial loss and distress.

### Finding

We have found fault causing injustice and made recommendations.

### 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 we recommend, within three months of the date of this report, the Council:

- provides Ms X with a further apology;
- pays Ms X £2,632.50 to reimburse fuel costs;
- pays Ms X £500 for distress and uncertainty;
- pays Ms X £300 for time and trouble;
- amends its stage 1 letter template to include information on how to escalate to stage 2;
- amends its stage 2 letter template to include a referral to us;
- amends its Post 16 transport policy to ensure it addresses its adult duty correctly and to ensure its appeal process is in line with statutory guidance; that is to:
  1. make clear that where it decides it necessary to make transport arrangements for adults or relevant young adults with an EHCP under section 508F of the Education Act 1996, such transport will be free of charge;
  2. remove any requirement to pay a charge or contribution where s508F applies;
  3. allow for a hearing with verbal representations at stage 2 of the appeal process;
  4. signpost to the Ombudsman.
- provides training/guidance to those staff responsible for school transport on its new policy and reminds them to give clear evidence-based reasons for decisions; and
- amends its processes to ensure it can access records of school transport decisions even if decision-makers leave the Council.

The Council has accepted these recommendations.

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## The complaint

1. Ms X complained the Council refused to pay costs she incurred taking her son, Mr Y, to college from September 2019 to the end of summer term 2022 and delayed considering her appeal. Ms X says she suffered financially and had to give up work.

## Legal and administrative background

### The 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 investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
4. Ms X's complaint to us is out of time however, as any fault and injustice was ongoing until recently, we consider there is good reason to investigate.
5. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this decision with Ofsted.

### Adult transport duty

6. Councils have a duty under section 508F of the Education Act 1996 to make such arrangements for the provision of transport as they consider necessary in respect of:
  - adults (i.e. those who are aged 19 or over) for the purpose of facilitating their attendance at maintained or assisted further or higher education institutions; and
  - relevant young adults with an Education Health and Care Plan ("EHCP") for the purpose of facilitating their attendance at institutions where they are receiving education or training outside the further and higher education sectors. For those young adults, the council's duty only applies where it has secured both the provision of education or training and the provision of boarding accommodation.
7. The adult transport duty applies only to young people who are attending a course which they started after their 19th birthday, including those with EHCPs.
8. Where the council decides it is necessary to make arrangements, any transport provided must be free.
9. *"This [decision about what is necessary] is not a pure discretion. Although the question of what is necessary is a matter for [councils], in deciding that question they must exercise their judgment judiciously and in good faith. If they come to the conclusion that it is necessary, they must make the necessary arrangements and the transportation must be free of charge."* (*Staffordshire County Council v JM (2016 WL 03208801)*)

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10. Where a council decides it is not necessary to provide transport, it has discretion to pay all or part of the reasonable travelling expenses for the student.
  11. An “adult” means a person who is neither a child nor a person of sixth form age.
  12. Councils also have a duty under section 508G to prepare a transport policy statement setting out any transport or other arrangements it proposes to make for “relevant young adults”.

### **Council’s transport policy**

13. We asked the Council for a copy of its transport policy in effect in 2019 as applied to those aged 19 or over. It provided a copy of its Post 16 transport policy 2019/20 and said this also applied to those over 19 with an EHCP.
14. We have only referred to sections relevant to this complaint.
15. Councils do not have to provide free or subsidised post 16 travel support but do have a duty to prepare and publish an annual transport policy statement.
16. Transport assistance is discretionary and subject to the availability of resources and to an individual student meeting the relevant eligibility criteria. There is a charge for post 16 transport which is set at £100 a term.
17. The policy outlines the discretionary assistance available. This includes independent travel training.
18. The Council will consider individual circumstances for those young people with learning and physical difficulties who apply for transport over the age of 19 years. It would be likely that in most cases, they will be referred to Health and Social Care for an assessment. If assistance is agreed, a contribution towards the transport would be required.
19. The Council’s current policy (for 2023/24) is on its website. This mirrors the previous policy in respect of the assistance available to those with learning and physical difficulties who apply for transport over the age of 19 years.
20. Neither policy explains if the Council decides it is necessary to provide transport under the adult duty this will be free of charge.

### **Appeals**

21. The Council has a two stage appeals process under both its previous and current policy.
  - Stage 1: review by a senior officer within 20 working days, providing a decision with reasons and information about how to go to stage 2.
  - Stage 2: review by an independent appeal panel within 40 working days, providing a decision with reasons and information about how to go to the Secretary of State if unhappy.
22. The statutory guidance sets out a two stage appeals process, this includes:
  - a hearing at stage 2, allowing the parent to make verbal representations; and
  - a recommendation councils make clear there is a right of complaint to us.

### **Principles of good administrative practice**

23. In 2018 we published a [guidance document](#) setting out the standards we expect from bodies in jurisdiction. This includes the following.

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- Taking reasonable, timely decisions, based on all relevant considerations.
  - Stating the criteria for decision making and giving reasons for decisions.
  - Keeping proper and appropriate records.

## **How we considered this complaint**

24. We produced this report after speaking to the complainant and examining relevant documents provided by the complainant and the Council.
25. 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 we found**

### **What happened**

#### **Background**

26. When we spoke to Ms X she explained the Council had always provided transport for her son to attend school or college at its own cost. She said the Council first arranged a college placement when her son was 18 but later found this was the wrong college and course. It then arranged another college placement for her son in September 2018, when her son was 19. It also provided transport to and from college. Ms X says her son then continued at this college moving through different levels of a course until he finished in summer 2022.

#### **This complaint**

27. On 9 and 20 September 2019 Ms X told the Council the shared taxi it had arranged for her son was no longer suitable. He was fearful and anxious getting the taxi and travelling with other people; he was unable to continue to use it. She explained she was now taking him to and from college and wanted the Council to pay her expenses.
28. On 24 August 2022 the Council wrote to Ms X apologising for its delay. It explained the COVID-19 pandemic was a factor but should not have resulted in such a delay. It said it had initially offered Independent Travel Training (“ITT”) to Mr Y, which Ms X did not consider suitable. Therefore, it offered Mr Y transport to and from college. Ms X did not accept this offer. She gave reasons for refusal, but this offer remained available. The Council would not contribute to her fuel costs because an offer of transport was available, and Mr Y had not been disadvantaged as she took him to college. It said Ms X could go to a stage 2 appeal if she remained unhappy.
29. Ms X wrote further to the Council.
  - It had not given any information on how to appeal.
  - It had delayed dealing with her appeal causing injustice.
  - ITT was not suitable and the Council agreed to provide transport however that transport was not suitable.
  - The Council had a duty to ensure her son could access college.
  - He would not have been able to access college unless she took him.
30. The Council responded at stage 2. In summary.

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- It upheld its previous decision.
  - It considered information from Ms X as to why ITT was unsuitable. It then agreed to provide transport for Mr Y to and from college.
  - In September 2019 Ms X raised concerns. She said she would take her son and requested expenses. However other options could have been explored to help her son in using the transport offered.
  - A social care assessment was considered but both parties agreed this would not help.
  - It would not agree to an additional cost by way of fuel contribution over and above the transport offered, as the latter was already offered outside of its usual funding.
  - Ms X could complain to the Secretary of State if she remained unhappy.
31. Ms X then contacted us. She explained she first raised concerns with the Council in September 2019 but despite chasing had not received a response until recently.
32. In response to our enquiries the Council confirmed Mr Y had an EHCP and started a college course secured by the Council after his 19th Birthday. It agreed s508F of the Education Act 1996 applied. However, it also had regard to s509AB 3, s509AB 3c and s509AB 3d in relation to the costs of transport. However, we note these sections only apply to learners of sixth form age.
33. We asked the Council for records it made at the time of its decision to offer transport in September 2019. It said its records were limited as an officer had left and IT confirmed they could no longer access their emails.
34. The Council explained the following.
- After offering ITT, Ms X explained Mr Y would struggle with this and asked for long-term transport.
  - It then offered transport on a dedicated college vehicle which remained available throughout Mr Y's time at college. This was a 2.5 mile, 10 minute journey.
  - Mr Y accessed transport to his previous college and school for several years on a shared vehicle.
35. The Council also said it offers any mileage allowance in line with the Approved Mileage Allowance Payment (AMAP) set by the Government of 45p a mile while the student is in the vehicle.

## Conclusions

36. The Council's Post 16 transport policy (both past and current) are not in line with the Council's statutory duties. Where the Council considers it necessary to make transport arrangements for adults it must provide any transport free of charge. However, its policy says a contribution is required. This is fault. The Council's response to our enquiries suggests it remains unaware of its duties in this respect. This therefore appears to be a systemic issue which may cause injustice if not addressed.
37. The Council's appeals process (both past and current) is not in line with statutory guidance. The Council has not provided for a hearing at stage 2 and it does not refer complainants to us. This is fault. This did not cause injustice to Ms X or Mr Y

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- but it may have caused injustice to others. We recognise the guidance is not mandatory however councils need to have good reason for departing from it.
38. We expect councils to keep records of their decisions and reasoning. However, the Council is unable to provide records of its decision to provide transport to Mr Y in September 2019. This is fault. This did not cause injustice to Ms X or Mr Y, but it could affect others. The Council should have a system allowing it to access records even after staff have left, for example by keeping records centrally.
  39. We are satisfied from the documents we have seen that the Council decided it was necessary to provide transport for Mr Y to and from college and it agreed to provide a shared vehicle at its own cost. When Ms X said this transport was no longer suitable the Council should have considered this and either decided it was suitable or made other arrangements.
  40. The documents provided in the Council's response to a draft report show some consideration of Ms X's concerns, but the Council did not address each point raised. We consider there was fault in the decision making which may have affected the decision outcome.
  41. The Council delayed addressing Ms X's concerns from September 2019 to February 2020 and then from March 2020 to August 2022. This is fault. We acknowledge Council resources were stretched during the COVID-19 pandemic however this level of delay is not justified. Ms X suffered distress and uncertainty as to whether she would recover her costs. She was also put to time and trouble chasing a response. This is injustice.
  42. At stage 1 the Council did not show it had considered Ms X's points that the transport offered was unsuitable and it did not explain how to escalate to stage 2. This is fault. Ms X suffered distress and uncertainty. This is injustice.
  43. At stage 2 the Council still did not show it had considered Ms X's points that its offer was unsuitable. It recognised options could have been explored at the time to improve its offer yet did not acknowledge it took little or no action to do so. This is fault. Ms X suffered distress and uncertainty. This is injustice.
  44. Had the Council addressed Ms X's concerns in full in either September 2019 or March 2020, as it should have done, we are satisfied it would have at least taken steps to address/improve the suitability of its offer so that Mr Y could continue to travel at the Council's cost. However, the Council took no substantive action for almost three years leaving Ms X to incur costs taking her son herself. This is fault causing injustice. Ms X made four journeys per day during term time over three years. Based on the Council's information and taking into account the usual mileage allowance, we calculate Ms X's fuel costs as £2,632.50 (2.5miles x 4 journeys x £0.45 per journey x 195 days per year x 3 years). While we acknowledge the Council's policy is to pay mileage only when the student is in the car, Ms X would not have incurred any costs but for the Council's fault. It is therefore appropriate for the Council to reimburse her for all four legs of her journey.
  45. We are satisfied Ms X was put to time and inconvenience in having to transport her son and we acknowledge the impact of the financial loss. This is further injustice. However, we cannot say Ms X had to give up work or took early retirement due to the Council's fault, as other factors were likely involved in those decisions.



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46. In response to a draft report Ms X said the Council was wrong to suggest the 2.5 mile journey from home to school took just ten minutes. The journey on the Council's shared transport took 45 minutes due to all the pick ups, causing her son distress.
47. In comments on a draft report the Council made the following comments.
- It had found further records. We note this includes:
    1. an enquiry from Ms X's local MP on 24 January 2020, chasing a response to Ms X's query of September 2019;
    2. a response from the Council to the MP's office on 10 February 2020. This outlined: the Council first offered ITT; Ms X then explained why Mr Y could not undertake this; it then offered a seat on its bus until he could take the ITT assessment. It considered Mr Y's fears of accessing the wrong bus could be addressed through driver reassurance. As both offers had been refused it would not offer a fuel contribution. However, Ms X could appeal this decision;
    3. on 24 February 2020 Ms X raised the matter directly to the Council. She explained she did not refuse ITT rather she provided evidence to explain why Mr Y could not undertake this, but she did not receive a reply. The Council had underestimated Mr Y's fears and only commented on one of those she raised; overlooking his anxiety in travelling with others. She also raised further points for consideration;
    4. on 19 March 2020 the Council told Ms X it would address her concerns under its appeal process. However, it apologised that there would be some delay in responding due to the Coronavirus situation at that time.
  - The Council accepts it is unlawful to charge a contribution once it has determined that it is necessary to provide transport for adults. It would like to assure us that it does not require those eligible for transport to make a financial contribution and the charge referenced in its policy has not been actioned for any other person and so no injustice has been suffered.
  - The guidance recommends a hearing but this is not mandatory. Nonetheless, the Council is happy to amend its policy to make it consistent with the national picture and with guidance.
  - It accepts our recommendations and has now amended its Post 16 transport policy.
48. We welcome the Council's engagement and are pleased it has already taken action to amend its policy. However, on review we find the updated policy does not resolve all the fault identified. The Council has removed the £100 per term charge and now provides for verbal representations on appeal and signposts to us. However, the policy still does not make clear that where the Council considers transport is necessary for adults it will provide this free of charge. And it still says a contribution is required, as referred to at paragraphs 18 and 36 above.
49. We have made some changes to our report to take into account and address the new information provided. Though overall our findings and recommendations remain the same.

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## 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. In addition to the requirements set out above the Council has agreed to take the following action to remedy the injustice identified in this report. Within three months of the date of this report the Council will:
- provide Ms X with a further apology;
  - pay Ms X £2,632.50 to reimburse fuel costs;
  - pay Ms X £500 for distress and uncertainty;
  - pay Ms X £300 for time and trouble;
  - amend its stage 1 letter template to include information on how to escalate to stage 2;
  - amend its stage 2 letter template to include a referral to us;
  - amend its Post 16 transport policy to ensure it addresses its adult duty correctly and to ensure its appeal process is in line with statutory guidance; that is to:
    1. make clear that where it decides it is necessary to make transport arrangements for adults or relevant young adults with an EHCP under section 508F of the Education Act 1996, such transport will be free of charge;
    2. remove any requirement to pay a charge or contribution where s508F applies;
    3. allow for a hearing with verbal representations at stage 2 of the appeal process;
    4. signpost to the Ombudsman.
  - provide training/guidance to those staff responsible for school transport on its new policy and remind them to give clear evidence-based reasons for decisions; and
  - amend its processes to ensure it can access records of school transport decisions even if decision-makers leave the Council.
52. The Council should provide us with evidence it has complied with the above actions.

## Decision

53. We find the Council at fault because it did not properly consider Ms X's concerns about the transport offered and delayed considering her appeal by three years. The Council should take the actions specified in paragraphs 50 to 52 to remedy the injustice caused. The Council has accepted our recommendations and we have completed our investigation.