

**Final report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
Nottingham City Council
(reference number: 18 018 188)**

10 November 2020

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.

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

Key to names used

Miss B	The complainant
C	Her son
D	Her daughter

Report summary

School transport

Miss B complains that:

- the Council unreasonably refused to provide home to school transport for her son C to his previous school and the special academy for pupils with moderate learning difficulties named in his Education Health and Care Plan (EHCP);
- the Council failed to take proper account of the difficulty C has walking long distances due to his hypermobility, or his diagnoses of autism, attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD) which make it difficult for him to use regular public transport;
- as a result, in order to get C to and from school, she has had to pay £400 a month to take C in a private taxi;
- this put her into debt on her utility bills and she was no longer able to afford the cost of a taxi for C; and
- this in turn has severely affected his school attendance and his social and educational development.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice to Miss B and C, the Council has agreed, within one month of the date of this report, to:

- apologise to Miss B;
- reimburse the costs Miss B incurred in getting C to school by taxi (based on £20 a day on the days where Miss B paid for C's transport, plus interest based on the increase in the Retail Price Index):
 - School 1 - £568
 - School 2 - £943;
- pay Miss B £300 for her time and trouble in repeatedly having to make the same complaint and appeal;
- pay Miss B £1,000 to reflect the distress resulting from the difficulty and hardship caused to the whole family as a result of the withdrawal of C's transport and the cost to Miss B of providing transport for C; and
- pay Miss B £5,500 (11 months at £500 each), on C's behalf, to remedy the impact on C of his lost schooling as a result of not receiving school transport.

Within three months of the decision date of this report, it will:

- review its procedures to ensure that decisions on school transport show how it has taken into account individual circumstances and the supporting evidence supplied, and explain the rationale for its decisions;
- ensure that second stage transport appeals are properly minuted to provide a suitable record of the basis for those decisions; and
- be able to demonstrate the new measures and procedures it will put in place to ensure its decisions and appeals are robust and defensible.

The complaint

1. Miss B complains that:
 - the Council unreasonably refused to provide home to school transport for her son C to his previous school and the special academy for pupils with moderate learning difficulties named in his Education Health and Care Plan (EHCP);
 - the Council failed to take proper account of the difficulty C has walking long distances due to his hypermobility, or his diagnoses of autism, attention deficit hyperactivity disorder (ADHD) and oppositional defiant disorder (ODD) which make it difficult for him to use regular public transport;
 - as a result, in order to get C to and from school, she has had to pay £400 a month to take C in a private taxi;
 - this put her into debt on her utility bills and she was no longer able to afford the cost of a taxi for C;
 - this in turn has severely affected his school attendance and his social and educational development.

Legal and administrative background

The Ombudsman's role and powers

2. We investigate complaints of injustice caused by "*maladministration*" and "*service failure*". We have used the word "*fault*" to refer to these. 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. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1), 26A(1) and 34(3), as amended*)

The law and the statutory guidance about school transport

Suitable transport for eligible children

3. As set out in the Education Act 1996, councils must make arrangements to provide suitable free school transport to those "*eligible*" children of statutory school age who:
 - attend their nearest suitable school and live further than the statutory walking distance. This is two miles for children aged less than eight years old and three miles for children eight and above;
 - are from a low-income family, defined as receiving free school meals or in receipt of the maximum Working Tax Credit. These children are entitled to free school transport if their nearest suitable school is more than two miles away if they are aged eight to eleven;
 - cannot reasonably be expected to walk to school because of their mobility problems or because of associated health and safety issues related to their special educational needs or disability. Eligibility for such children should be assessed on an individual basis to identify their particular transport requirements. Usual transport requirements (e.g. the statutory walking distances) should not be considered when assessing the transport needs of children eligible due to special educational needs and/or disability. (*Education Act 1996 section 508B and Schedule 35B*)

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4. The Government also issued statutory guidance in July 2014 to local education authorities on home to school transport. This says:
 - When determining whether a child with special educational needs, disability or mobility problems cannot reasonably be expected to walk to school, councils must consider if the child could reasonably be expected to walk to school if accompanied. If so, councils must also decide whether the child's parents can reasonably be expected to accompany the child on the journey to school, taking account of a range of factors including the child's age and whether one would normally expect a child of that age to be accompanied. (*Home to school travel and transport guidance - Statutory guidance for local authorities 2014, paragraph 17*)
 - For a council's school transport arrangements to be suitable they must also be safe and reasonably stress free, to enable the child to arrive at school ready for a day of study. (*Home to school travel and transport guidance - Statutory guidance for local authorities 2014, paragraph 35*)

Disruption to education

5. The statutory guidance states:

"Where entitlement to extended travel rights has been established the department's opinion is that local authorities should consider the pupil to be eligible for the entirety of the school year for which the assessment has been made. If a pupil ceases to be eligible any change to provision made by the local authority must be considered in the context of the potential impact on the child. Disruption to a child's education should be avoided." (*Home to school travel and transport guidance - Statutory guidance for local authorities 2014, paragraph 25*)

Appeals process

6. The statutory guidance recommends a two-stage procedure for school transport appeals:
 - Stage 1: review by a senior officer.
 - Stage 2: review by an independent appeal panel.
7. The guidance recommends that the parent should be able to make both written and oral representations to the panel.
8. At both stages of the appeals process, the decision should set out:
 - the nature of the decision reached;
 - how the review was conducted;
 - information about other departments and/or agencies consulted;
 - what factors were considered; and
 - the rationale for the decision.

Defence against non-attendance

9. The statutory guidance states:

"Parents are responsible for ensuring that their children attend school regularly. However, section 444(3B) of the Act provides that a parent will have a defence in law against a prosecution by a local authority for their child's non-attendance at school where the local authority has a duty to make travel arrangements in relation to the child under section 508B and has failed to discharge that duty." (*Home to school travel and transport guidance - Statutory guidance for local authorities 2014, paragraph 15*)

Our Focus Report on School Transport

10. As part of our role, we periodically issue [Focus Reports](#) to highlight common or systemic issues we see. These reports share learning from complaints to help councils and care providers make improvements, contribute to public policy debates, and give elected members tools to scrutinise local services.
11. In March 2017, in response to growing numbers of complaints about school transport, we issued a Focus Report entitled [“All on board? Navigating school transport issues”](#).
12. In that report, we highlighted a range of issues. These include that:
 - councils must not only consider mobility issues, but also whether a child has non-physical problems associated with their special educational needs or disability, which mean that it is not reasonable for the child to walk to school; and
 - councils must also ensure that, in reaching decisions on school transport (whether at application or appeal stage), they properly consider a child and family’s individual circumstances. They must also demonstrate what factors have been considered and taken into account in reaching a decision.

How we considered this complaint

13. We produced this report after examining the relevant documents and correspondence from the Council and the complainant. We have had discussions with the complainant, made enquiries of the Council and considered the comments it provided in response. We have had regard to the relevant law and statutory guidance, and the Council’s Home to School Travel Assistance Policy.
14. We have given the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before deciding whether to finalise the report.
15. Under our information sharing agreement, we will share this report with the Office for Standards in Education, Children’s Services and Skills (Ofsted).

What we found

What happened

The Council agreed to provide school transport for C by taxi in 2015

16. Miss B lives with her son C and daughter D. They are both of primary school age. The family are on a low income, and the children receive free school meals. C sees his father regularly, but his father lives on the other side of the city.
17. C was referred to a community paediatrician who diagnosed him with autism in September 2014. C was also experiencing pain in his legs when walking distances and the community paediatrician diagnosed hypermobility.
18. In May 2015, an occupational therapist (OT) in the Council’s Disabled Children’s Team provided a letter supporting C’s application for school transport. She confirmed C’s hypermobility and difficulty walking. The OT also commented that:

“[C]’s Autism presents as unpredictable behaviours resulting in a lack of awareness when out in the community. [C] is at a high risk of absconding and will run into the road without consideration for his own safety. [C]’s autism also

has an impact on his social skills meaning that he will trust anyone and also does not understand who he is able to talk to.”

“[C] needs to attend school to maintain his education and develop his skills. In order to attend school [C] will need to transport to ensure that he is safe. It would not be possible for [C] to walk to school due to his mobility needs and behavioural needs. C would have to rest regularly and walk slowly to ensure that he did not tire too quickly.”

19. The Council provided a wheelchair for C to help with his mobility. C was also awarded the lower rate mobility component and the highest rate care component of Disability Living Allowance.
20. C started attending School 1 in November 2015. In December 2015, Miss B applied for Special Needs Travel Assistance for him. At the time, C was under eight years old and the home to school distance was over two miles.
21. Miss B said that C could neither walk to school nor take public transport with adult supervision. She explained that he had hypermobility, walked on tiptoe, had limited balance, and sometimes used a wheelchair. He also had autism and did not understand road safety. Miss B said she could accompany C to school in a vehicle but could not walk with him to school due to her own medical issues. She provided details of C’s paediatrician and OT.
22. A second paediatrician also diagnosed C with ADHD in 2016. In March 2016, the Council agreed to provide transport for C by taxi to his school until June 2020. The stated decision reason was that C’s designated school was over the walking distance and that he used a wheelchair. The comments section on the form also stated that C had hypermobility, autism, and ADHD. C’s sister, who was attending the same school, travelled with him in the taxi.

Miss B reapplied for transport for C to attend School 1 after a house move in 2017 – the Council refused

23. Miss B and her children had to move home in 2017. Miss B and her partner also separated and understandably this had a significant impact on C. However, his school attendance in the autumn term 2017 was 90%.
24. Miss B applied for transport for C from the family’s new address to School 1. C was now over eight years old, and the family still on low income. However, the home to school distance was now around one and a half miles so there was no automatic entitlement to transport under the low-income criteria. That said, Miss B explained that she was applying for the same reasons as before and that C sometimes used a wheelchair.
25. The Council continued to provide transport but reviewed C’s transport eligibility. A special educational needs (SEN) officer contacted C’s school to ask if he still required his wheelchair in and around school. The school replied that:

“[C] has not had his wheelchair in school since the summer term of 2016, this was a similar time to an appointment with his [community] paediatrician and school had liaised closely with [the paediatrician].”
26. On 21 December 2017, an SEN team manager wrote to Miss B and advised her that C had received travel assistance from his previous address: *“as he met the transport criteria on distance”*. She refused Miss B’s application because C no longer met the distance criterion. She told Miss B she would have to make her own arrangements for C’s transport after Christmas but that she could appeal.

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27. Miss B started paying for taxis from the beginning of January 2018 to get C (and D) to school. She also appealed against the refusal of transport. She provided a copy of the OT's May 2015 letter and explained that:
- C could still not walk to school because of his hypermobility and lack of sense of danger;
 - he could not travel on public transport because of his autism, ADHD and ODD, which could lead him to him attacking people either physically or verbally;
 - she had health problems and could neither chase nor carry C;
 - she used the same taxi drivers for C wherever possible as they were familiar with his needs. She also used the same taxi company when C was not in school; and
 - stopping C's travel would affect his attendance and routine and would set back both his behaviour and education.
28. The SEN team manager contacted the second paediatrician to ask if there was a health reason why C could not take public transport to school when supported by an appropriate adult. She said she had an old letter from C's OT advising that he struggled to walk long distances, but the case was closed with the OT so she was uncertain whether this advice was still current.
29. The second paediatrician confirmed that C had problems with autism, ADHD and sleep deprivation which had led to increasingly challenging behaviour. He said that Miss B had explained about C's behavioural difficulties including him refusing to walk due to tiredness and pain in his shins, having poor awareness of danger (including from strangers), stepping out into traffic without checking, trying to jump off buses, repeatedly ringing the bell on the bus and making inappropriate comments. He was not convinced that C had hypermobility but recognised that C had intermittent pain in his legs and would investigate this with further tests.
30. The Council wrote back to Miss B in February 2018. It explained that the paediatrician's letter advised that:
- "C has no physical barriers to walking, although he states that you have identified concerns regarding the management of [C]'s behaviour on public transport."*
31. It also explained that C no longer met the distance criteria for assistance following the family's house move and:
- "there is no clear evidence that C cannot travel to school safely when accompanied by a responsible adult and therefore the decision remains not to offer travel assistance".*
32. The Council said it would refer the papers for a further appeal.
33. Miss B continued to pay for taxis for C when she could, though she could not afford to do so every day. C's attendance in the spring term fell to less than 50%. Miss B paid for taxis the days that C attended and for her daughter on several other days when C did not attend.
34. In the meantime, Miss B asked the Council to consider an Education, Health and Care Plan (EHCP) for C.
35. Miss B has explained that the disruption to C's transport affected his willingness to go to school and impacted his schooling. C was excluded by the school before the Easter holiday and, after returning to school in April 2018. Miss B paid for

taxi for her daughter for the first three weeks of term, though C only attended school the first day.

36. School 1 was concerned that C and D were not attending regularly and contacted the Council, which wrote to Miss B to warn her about the children's attendance. Miss B says the school told her that, if C were excluded once more, he would be sent to a school for children who had been permanently excluded. As C was being assessed for an EHCP and she was trying to get him into a school that was appropriate to his needs, Miss B was very concerned that a permanent exclusion would stop C getting a placement at the school she was seeking for him. She therefore felt she had to take C off roll at School 1 to prevent this. C received no schooling at home aside from some Key Stage 2 books purchased by Miss B.
37. As part of the EHCP process, the SEN team obtained information in May 2018 from a range of professionals including School 1's Nurture Team, Special Educational Needs and Disabilities Coordinator and C's paediatrician.
38. The school's Nurture Team observed that C was physically healthy, enjoyed PE and had never struggled with physical activities. They also commented on the breakdown of relations with the school, the impact they felt this had had on C's mental health and C's resulting aggressive behaviour. They commented on how the withdrawal of transport had made it difficult for Miss B to get C to school as she could not afford taxis, and this in turn had affected C's attendance and behaviour and he had regressed significantly.
39. The second paediatrician noted C's earlier diagnosis of hypermobility and Miss B's reports of C's increased leg pain. He had not observed significant pain in clinic (nor had the school during school hours) and had observed a full range of movement and normal hip and knee x-rays. He noted C's behavioural difficulties and ODD which might relate to his ADHD/autism diagnosis. He emphasised that, given C's autism, sufficient attendance at school would be crucial for his future development and learning. A third paediatrician would continue to review C.
40. The Council responded to Miss B's second stage transport appeal. The reviewing officer refused the appeal on the same grounds as the first appeal.
41. The Council completed C's EHCP in July 2018 and agreed extra provision for C. The EHCP named School 2, a local special academy for pupils with moderate learning difficulties, for C to attend from September 2018. It repeated the second paediatrician's comments on C's leg pain and autism/ADHD. The EHCP referred to C's behaviours: his fight or flight response when anxious; overreaction to events; verbally and physically aggressive behaviour; unpredictability; and inability to consider risk or danger. In the Social & Emotional Well-being and Mental Health sections of the EHCP, the desired outcomes for C included belonging and full-time attendance at school.

Miss B reapplied for transport when C moved to a special school, School 2, in September 2018 - the Council refused

42. In August 2018, Miss B submitted a transport application for C to School 2. C was now over eight years old. Although the family was on a low income, the home to school distance was also around one and a half miles, so there was no automatic transport entitlement under the low-income criteria. However, Miss B again explained that C had difficulty walking, walked on tiptoe and that this caused him pain. She again referred to C's behavioural difficulties in public and social situations. She said she was not sure that she could accompany C as her daughter was still attending School 1 which was some distance away.

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43. The SEN team manager wrote to Miss B at the end of August 2018 rejecting her transport application because it did not meet the distance criteria. Although C could walk short distances, the letter made no reference to whether C could walk one and a half miles to school, or travel accompanied on public transport.
44. In early September 2018, the SEN team received a letter from C's third paediatrician as Miss B had raised concerns about parts of the EHCP. She said that Miss B was concerned that, although the EHCP referred to the second paediatrician not having observed significant leg pain, there remained concerns that C had leg pain and that he could only walk short distances. She explained that C would be having physiotherapy to help with his walking difficulties. She also passed on Miss B's concerns that the EHCP made no reference to C's sensory difficulties.
45. Miss B appealed the school transport decision under the first stage of the Council's procedures. She explained that C had difficulty walking far and could fall to the floor in pain. She said he was awaiting a physiotherapy appointment. She referred to his challenging behaviours and that he swore, shouted, and screamed. He found it difficult to deal with a lot of noise and reacted physically if stared at.
46. She also explained the difficulty getting both children to different schools at the same time. She said the Council already had information from C's OT and former disabled children's team worker and explained that C's behaviour had worsened. She said that, if the Council would not provide transport, she would have to keep both children off school because she could not afford £400 a month for taxis.
47. The Council responded to Miss B's first stage appeal in September 2018. Its response stated:
- "the reason[s] for not granting travel assistance is that [C] does not meet the criteria on distance grounds for eligibility for travel assistance"*.
48. The appeal response referred to an available bus route, which involved 788 metres of walking. It referred to letters which Miss B had provided referring to C's leg/pains stiffness and physiotherapy referral but said that these:
- "do not state that any of the medical professionals involved are of the view that C is unable to travel to school by public transport/walking so I cannot conclude that he has a special transport need that requires the LA to offer home to school travel assistance"*.
49. After C's return to School 2 in September 2018, Miss B paid for taxis for most of the first half of the term when C attended quite regularly and for some of the second half of the term. In all, C's attendance in the autumn term was 56%.
50. C saw a paediatric physiotherapist in December 2018, and Miss B appealed again in January 2019 under the second stage of the Council's procedures. This appeal involved an independent school transport appeals panel.
51. In her appeal, Miss B again explained C's difficulty walking. She also asked the panel to consider the evidence that she had previously submitted. She said she could not afford transport for C and that, since it had been cancelled, this had significantly affected his school attendance, education, and behaviour. She referred to an incident before Christmas where C had refused to get in a taxi to come home because it was not his usual driver. In all, it had taken an hour and a half to calm him down, get him in the car and leave the school grounds. This caused further problems as she also had to meet her daughter from school.

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52. Miss B provided a December 2018 letter from C's physiotherapist. This stated that C's hypermobility, poor foot posture and reduced core stability caused C knee pain. It concluded that C "*is able to walk short distances only*" and "*is always likely to have limited walking distance...*". Miss B also referred to the difficulty that C experienced when presented with a change in his usual routine and that even a change in his usual taxi driver could prove very distressing for C.
53. The appeals panel considered Miss B's appeal. It noted that C had been refused transport on grounds of distance and considered whether C could walk to school. It noted the school's comments that C had not been using his wheelchair. It also noted the physiotherapist's comment that C was "*able to walk short distances only*" but had no clear view on what this meant. There was a comment that the Council was not saying that C would have to walk and that buses were wheelchair friendly. There was a brief reference to C's behavioural issues and the fact that the SEN team had considered C's physical and educational needs. The panel noted that C had some walking ability, that the physiotherapist was proposing insoles for C and had a plan for stretching and exercises. It also noted that he did not need an ambulance to take him to school, though Miss B had not suggested this. However, it made no reference to the physiotherapist's comment that C "*is always likely to have limited walking distance*". It considered that C's father, who lives in the other side of the city, and a grandparent could provide support. As there were three adults to assist C, the panel agreed with the decision to refuse transport.
54. The Council wrote to Miss B in late January 2019 refusing her appeal. It found that the SEN Team had considered C's application in line with the transport policy. It said it acknowledged the additional points raised and information provided, but made no specific reference to any correspondence provided or points made by Miss B. It concluded that the original decision to decline transport was correct under the eligibility criteria.
55. C did not resume at school for the first two weeks of the spring term and only attended on a few occasions when Miss B paid for taxis. So School 2 funded taxis for C for a two-week period in February 2019 to try and help him settle back into school, though C only attended two days.

Further evidence from a paediatrician in May 2019 – the Council agreed to provide C's school transport

56. Miss B then complained to us.
57. C attended school for just four days at the start of the summer term. In May 2019, Miss B obtained a further letter from C's third paediatrician which stated:
- "I was disappointed at today's assessment to hear that he has not attended school for some months. This is because he does not currently qualify for transport to and from school. He started at [School 2] as you know at the beginning of this academic year after significant difficulties at his previous school and long periods of non-attendance. He made a good start at [School 2] where he is settled, enjoys attending and was progressing. However, because of the family's proximity to school he did not qualify for transport to school and mum therefore was needing to get him there by taxi everyday which she is unable to continue to sustain financially. She is unable to get [C] to school by any other methods.*
- Walking is not possible because his hypermobility and pain problems mean that he tires very easily and can only walk very short distances. He has been*

provided with a wheelchair and the family do use this occasionally for trips out. However, at his previous school he felt that he was bullied for being a wheelchair user and he refuses to go to school in his wheelchair (he does not need the wheelchair to mobilise around the school). He struggles with going on any public transport for a number of reasons. Firstly, he finds it very difficult to tolerate a lot of people around him, or the noise and smells that he may encounter on public transport. He is frequently verbally abusive to other passengers and has on one occasion been aggressive. Because of these problems mum therefore feels that the only option is to take him to school by taxi which she cannot afford long term.

It would be a great shame if having found [C] a place at a school where he is settled, happy and making progress, that this is jeopardised by the transport issues. I do hope that some special consideration can be made in supporting the family to get him from home to [School 2] in order to maintain the placement.”

58. Following receipt of this letter, the Council reviewed its decision and agreed to provide transport for C because it demonstrated:
- “that [he] was unable to walk the required distance to his nominated school and found difficulties using public transport to undertake said journey”.*
59. The Council has since agreed to provide £20 a day as a budget for Miss B to send C to school by taxi. C resumed schooling at School 2 in July 2019 with a staged return for three and then four days a week.
60. He then attended School 2 regularly five days a week from September 2019 until the lockdown in Spring 2020 due to the coronavirus outbreak.

Analysis

Withdrawal of transport to School 1 in January 2018

61. The Council says it originally awarded transport due to C’s hypermobility and pain walking, and because the school he attended was over the statutory walking distance.
62. When Miss B re-applied for transport in 2017 after moving home, the Council checked with the school whether C was using a wheelchair but it did not check with medical professionals whether he still needed a wheelchair before deciding to withdraw transport. This was fault. The Council should not have withdrawn transport without checking with medical professionals.
63. The Council’s refusal letter says it had awarded transport based on distance and was withdrawing it because the distance criterion was no longer met. However, if the Council considered that C’s previously identified conditions no longer prevented him from walking to school, it should have stated this as a reason in its letter.
64. Miss B had applied for transport on the same grounds as before, and the Council says the transport team was aware of C’s autism/ADHD. But the May 2015 occupational therapist letter provided with the original application said that C needed transport to keep him safe. The Council did not consider this in withdrawing C’s transport and did not refer to this in its decision letter. This was fault. The Council should not have withdrawn transport without having regard to this.

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65. The statutory guidance advises councils to have regard to the need to avoid disruption to a child's education when eligibility changes mid-year. Children with autism can be particularly sensitive to changes in routine, but the Council did not consider the potential disruption to C's education or the possible impact on him of the change of routine when withdrawing transport during the academic year. Moreover, by notifying Miss B just before Christmas of the withdrawal of transport from the beginning of January it effectively gave no notice of the change. This was fault. Given C's difficulty coping with change, this would have been very unsettling for him and caused him distress.

Refusal of appeals for transport to School 1 in 2018

66. The Council's first stage appeal response said that "[C] has no physical barriers to walking". This statement does not properly reflect the medical advice. The second paediatrician was not convinced that C had hypermobility, despite the earlier diagnosis. But he recognised that C had intermittent pain and wanted to do more tests. This suggests that the medical advice was not properly considered. This was fault.
67. The second paediatrician had also referred to C's autism and explained that this was leading to increasingly challenging behaviour. This was clearly relevant to the concerns that Miss B had raised about the difficulty taking C on public transport. However, no reference was made to this in the first stage appeal response.
68. As to the refusal of the second stage appeal for School 1, the Council received information from the second paediatrician before sending the second stage appeal response. The paediatrician had not found evidence to support the hypermobility diagnosis during the EHCP process but had noted Miss B's concerns about C's leg pain. The Council refused the appeal because it considered there were no physical barriers which prevented C from walking.
69. In refusing C's second stage appeal, the Council also concluded that, although there were concerns about C's behaviour when using public transport, it was felt that he could access public transport when supervised by an appropriate adult. However, the second paediatrician had referred in his February letter to C's increasingly challenging behaviour. Moreover, during the EHCP process, both the school and the second paediatrician had referred to C's serious behavioural problems and aggressive behaviour. In view of this, it is unclear what evidence the Council had to support its conclusion that C could use public transport if supervised.
70. So, in addition to the failure to properly consider the decision to withdraw transport, we consider that there were also serious deficiencies in the way it considered Miss B's appeals against that decision.

Refusal of transport to School 2 from September 2018 and subsequent appeals

71. When Miss B applied for transport for C to School 2 in August 2018, she again referred to C's difficulty walking and his behavioural problems. However, the Council's rejection of her application did not refer to this but simply said that he did not meet the distance criteria. This was fault.
72. When refusing Miss B's first stage appeal, the Council took into account the third paediatrician's August 2018 letter but refused the appeal because:

"the letters do not state that any of the medical professionals involved are of the view that C is unable to travel to school via public transport/walking".

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73. However, the third paediatrician's letter stated that:
- “there are concerns that [C] does have pain in his legs that limit his exercise tolerance to only being able to walk short distances before he needs to rest”.*
74. We do not therefore consider that the Council's response properly represents the third paediatrician's concerns.
75. As to the refusal of Miss B's second stage appeal for transport to School 2, she was not offered the opportunity to make an oral presentation to the panel, as recommended in the statutory guidance.
76. The appeal notes show that the panel considered whether C was able to walk to school. The reference to whether C needed an ambulance to get to school was irrelevant. It does not appear that proper weight was given to the physiotherapist's view that C's walking difficulties were likely to be permanent. Moreover, the panel had no clear view on how far C could walk, so it does not appear that it was able to form any clear view as to whether he could walk to school, nor does it appear to have done so.
77. As to whether C could travel on public transport due to his autism and behavioural difficulties, despite the extensive evidence of this in the Council's possession, there was minimal reference to this and nothing to suggest that the panel was able to reach an informed view on whether C could do so.
78. Rather, the decision to refuse transport appears to be based largely on the fact that there were three adults available to assist C. The panel was entitled to consider whether someone with parental responsibility could provide transport. But one of the three was a grandparent of C, who had no parental responsibility and so was not relevant to the decision. The second was C's father. Despite the earlier reference to C's father living on the opposite side of the city, there is nothing to suggest that the panel considered whether it would be reasonable or practical for him to provide travel on a daily basis, and how this would be achieved. Moreover, the fact that the Council is now providing transport, suggests that it does not consider this to be practical.
79. Furthermore, the decision letter does not show how the Council considered the specific evidence that Miss B had put forward and sheds no light on the basis for the panel's decision. Given the lack of clarity, omissions, and irrelevant factors in the panel's consideration of C's transport request, we do not consider that the panel properly considered Miss B's appeal.

Appeal process

80. At the time of Miss B's second stage appeal for transport to School 1, the Council's policy was for a single officer to consider second stage appeals. However, we expect councils to follow the recommended two-stage appeals process, which includes an independent panel at the second stage, unless they have good reason not to.
81. Following a separate complaint to us ([18 008 390](tel:18008390)), the Council agreed to amend its policy in November 2018 so that an independent panel would consider second stage appeals. Accordingly, C's second stage appeal for transport to School 2 in January 2019 was considered by an independent panel.
82. The Council has explained that it has minuted second stage appeal hearings since January 2019. However, at this stage it had not interpreted the statutory guidance to mean that it should specifically invite the parent to attend or contribute more than already submitted by them when escalating the appeal.

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83. In response to another school transport complaint ([18 016 952](#)), we found fault in the way the Council considered the complainant's appeals, including the lack of information provided in the decision letters and that there was no right to make oral representations to the panel. In our decision statement, we noted that *"the Council has decided that in future appellants would be invited to make verbal representations"*.
84. In response to our recommendations, the Council agreed in July 2019 to:
- ensure its appeals process follows the guidance; and
 - amend the appeals section of its transport policy to reflect the guidance and ensure decision letters comply with this same guidance.
85. The Council has confirmed that it carried out the agreed actions in August 2019. Unfortunately, the Council failed to update the link to its updated policy on its website, so that parents clicking on the link would not be made aware of the up-to-date policy. However, the Council has explained that since August 2019, second stage appeal letters to families contain an invitation to parents to present information in person. The Council has also now updated the link.
86. The Council considers that it has already acknowledged and taken action to amend its policy and practice to reflect the learning and advice from the earlier complaints. As evidence of this, it has provided a copy of the updated policy and a redacted copy of a second stage appeal showing detailed reasons for the appeal decision.
87. Accordingly, it considers that it has already taken steps to address the failings identified in this investigation, which covers the period between autumn 2017 and spring 2019. It considers that the improvements to the way that it has dealt with appeals is borne out by the fact that there have been only three second stage appeals since it amended its policy and practice in response to our July 2019 recommendations.
88. That said, the Council has noted, in particular, the advice contained in paragraphs 5, 8 and 12 above, which focus on transparency and consideration of the wider family circumstances, including any potential disruption to a child's education, which are reflected in our final three recommended actions below. It agrees these recommendations and, going forward, has agreed to pull together the data from school transport appeals into a central monitoring system to allow for stronger management oversight and consistency of communication.

Conclusion

89. It is not our role to say if C should have had transport. However, we consider that there was fault by the Council both in the way it originally decided to withdraw transport for C and in the way it considered Miss B's subsequent requests to have that transport reinstated.
90. In making the original award of taxi transport for C, the Council took into account his diagnosed mobility problems and also had regard to his diagnosis of autism and behavioural problems.
91. However, the Council then withdrew transport to School 1 without seeking medical evidence regarding C's mobility and with no consideration of C's autism, behavioural difficulties or the previous evidence provided of risk to his safety. Furthermore, it did not take account of the statutory guidance that disruption to a child's education by withdrawing transport mid-year should be avoided. Given C's

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- diagnoses and the potential for disruption to his education, we consider that, had it considered Miss B's application properly, on the balance of probability the Council would have continued to provide transport for C to School 1 for the remainder of the school year.
92. Moreover, the fault in the appeal process for transport to School 1, and the consideration of Miss B's application and subsequent appeals for transport to School 2 means that there is doubt about whether those decisions may have been different if it were not for the fault.
 93. Throughout this process, the Council has continually given considerable weight to the second paediatrician's questions over whether C has hypermobility. However, although the paediatrician questioned C's hypermobility diagnosis, he acknowledged C's leg pain, his autism diagnosis, and behavioural difficulties, but the Council gave no weight to this. The third paediatrician was even more clear in her emphasis of C's walking difficulties, yet the Council again gave no weight to this. The Council also appears to have placed little or no weight on evidence in its possession which would support Miss B's case in terms of C's difficulty walking and the risks presented by his behavioural problems.
 94. The Council's decision to reinstate transport for C in May 2019 would appear to support the view that, but for the fault, C would have continued with school transport throughout 2018 and 2019.
 95. Given there was fault in the process, and on balance we conclude if it had been carried out correctly the Council would have provided transport, then Miss B has suffered a significant injustice.
 96. She has paid for school transport for most of 2018, when the Council should have provided this. Given her low income, this would have had a significant impact on the family. It also meant, in times of financial hardship, C did not attend school.
 97. We note the breakdown of relations with School 1 and appreciate that this may have contributed to C's reduced attendance. But C's attendance in the autumn term had been 90%.
 98. We consider that the Council's decision to stop providing transport and the fact that Miss B could not afford to pay for daily taxis for C meant that Miss B was unable to get C to School 1 regularly. Given C's diagnoses of autism and ADHD and his behavioural problems, on the balance of probabilities the removal of transport significantly contributed to the disruption of C's routine, the deterioration in his behaviour and the breakdown in the relationship with the school. This, together with the cost of transport, significantly contributed to his loss of schooling for half the spring term and the whole summer term of 2018.
 99. On balance we also consider that, after the refusal of transport to School 2, the cost and difficulty for Miss B of getting C to School 2 was such that C's attendance was disrupted in the autumn term of 2018 and he then barely attended school in the spring and summer terms of 2019.
 100. We consider that the Council's actions have resulted in very considerable disruption to C's education and personal development. In all, C has lost 11 months of schooling over an 18-month period.
 101. In respect of procedural and policy changes, we accept that the Council has carried out the actions agreed in response to our earlier investigations and appreciate that the Council has already done much to avoid the circumstances which have led to the fault in this case. We also welcome the further steps that

the Council has agreed to take to seek to ensure the robustness, fairness, clarity, and consistency of its decisions.

Recommendations

102. 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*)
103. We welcome that the Council has agreed to our recommendations to remedy the injustice caused to Miss B and C.
104. To remedy the injustice to Miss B and C, the Council has agreed, within one month of the date of this report, to:
- apologise to Miss B;
 - reimburse the costs Miss B incurred in getting C to school by taxi (based on £20 a day on the days where Miss B paid for C's transport, plus interest based on the increase in the Retail Price Index):
 - School 1 - £568;
 - School 2 - £943.
 - pay Miss B £300 for her time and trouble in repeatedly having to make the same complaint and appeal;
 - pay Miss B £1,000 to reflect the distress resulting from the difficulty and hardship caused to the whole family as a result of the withdrawal of C's transport and the cost to Miss B of providing transport for C; and
 - pay Miss B £5,500 (11 months at £500 each), on C's behalf, to remedy the impact on C of his lost schooling as a result of not receiving school transport.
105. Within three months of the date of this report, it will:
- review its procedures to ensure that decisions on school transport show how it has taken into account individual circumstances and the supporting evidence supplied, and explain the rationale for its decisions;
 - ensure that second stage transport appeals are properly minuted to provide a suitable record of the basis for those decisions; and
 - be able to demonstrate the new measures and procedures it will put in place to ensure its decisions and appeals are robust and defensible.

Final decision

106. We have found evidence of fault causing injustice.
107. We welcome that the Council has agreed to take the action described in paragraphs 104 and 105 to remedy that injustice. This will provide a satisfactory remedy to the complainant.
108. Notwithstanding this remedy, we have completed our investigation into this complaint by issuing a report because we consider it is in the public interest to do so, given the significant injustice caused to the complainant, and because we also consider this a significant topical issue.