

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

**Investigation into a complaint about
Bury Metropolitan Borough Council
(reference number: 23 005 479)**

8 December 2023

The Ombudsman's role

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

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

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

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

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

Key to names used

Mrs X	the complainant
Mr Y	Mrs X's adult son

Report summary

Education Council: Transport

The Council failed to carry out an agreed action to review its post-16 education transport policy, and clearly explain the difference between sixth form and relevant adult learners, following two previous investigations by us. As a result, we have decided to use our powers to issue this public report for the Council's non-compliance with our recommendations.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (Local Government Act 1974, section 31(2), as amended)

The Council should provide us with evidence to show that it has issued:

- a report to cabinet in December 2023 on the new policy;
- the full stakeholder consultation in Spring 2024;
- the report to cabinet in April 2024 for a decision regarding implementation; and
- the revised post-16 transport policy and made it available to the public by 31 May 2024.

The complaint

1. In an earlier investigation by us in 2022 (reference 21 011 785), we considered a complaint from Mrs X that the Council failed to provide appropriate free transport to enable her adult son Mr Y to attend the college named in his Education, Health and Care (EHC) Plan. The Council agreed to carry out all the recommended actions from our investigation into that complaint by 30 August 2022.
2. We opened a second complaint investigation in November 2022 as, despite our repeated requests and reminders, the Council failed to carry out the agreed actions from our first investigation, including failing to update its post-16 transport to education policy.
3. In our final decision for our investigation into the second complaint in January 2023 (reference 22 011 825), the Council agreed to our recommendations and agreed to complete them all by 13 February 2023.
4. This complaint investigation deals with the Council's continued failure to carry out the agreed action to review its post-16 transport to education policy.

Legal and administrative background

The Ombudsman's role and powers

5. 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)
6. When we find fault causing injustice, we may recommend a remedy for any injustice caused to the person affected, and service improvements to prevent injustice being caused to others in future by similar fault. (Local Government Act 1974, section 30, as amended)
7. We consider six criteria when deciding whether to issue a public interest report, one of which is non-compliance with an Ombudsman's recommendation.

Legal background

Transport for sixth form learners

8. These are learners of sixth form age (aged 16 to 19 years if they started the course before their 19th birthday). It also includes learners with EHC Plans up to the age of 25 years who started their programme of learning before their 19th birthday.
9. The overall intention of the sixth form age transport duty is to ensure that learners of sixth form age can access the education and training of their choice; and if support for access is requested, this is assessed and provided where the council has decided it is 'necessary'.
10. Councils must prepare an annual transport policy specifying the arrangements for provision of transport or otherwise the council considers is necessary for sixth form learners. This included such matters as financial support or concessions. It must publish the statement on or before 31 May. (Education Act 1996, section 509AA) Its policy must also set out its arrangements for disabled sixth formers. (Education Act 1996, section 509AB)

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11. Councils may ask parents for a contribution to transport costs for sixth form learners. However, they should ensure that any contribution is affordable and have arrangements to support low-income families.
- Transport to education for relevant adult learners**
12. The law relating to transport for adult learners has been in force since 2010.
 13. Relevant adult learners are those who started their course **after** their 19th birthday. It includes adults who are under 25 years old for whom an EHC Plan is maintained, who started their course after their 19th birthday.
 14. An EHC Plan is for children and young people between 0 and 25 years old in education, who have additional needs. The EHC Plan coordinates a child or young person's health and social care needs and sets out any additional support they might need. (The Children and Families Act 2014, section 82)
 15. Councils may also be able to assist with transport under the Care Act 2014 if the young adult has care needs.
 16. The statutory guidance says the overall intention of the adult transport duty is to ensure that those with the most severe disabilities with no other means of transportation can undertake further education and training after their 19th birthday to help them move towards more independent living.
 17. Section 508F of the Education Act 1996 requires councils to make transport arrangements they consider 'necessary' (or that the Secretary of State directs) to facilitate the attendance of relevant young adults at institutions where the local authority has secured the provision of education for the adult concerned.
 18. When a council finds it is 'necessary' to provide transport for the relevant adult under section 508F, then the transport must be provided and be free of charge (Education Act 1996, section 508F(4)). If a council decides it is not 'necessary', then it has discretion to pay all or part of the reasonable travel expenses.
 19. Councils are under a duty to prepare a transport policy statement setting out any transport or other arrangements for adults aged 25 and under with EHC Plans. (Education Act 1996, section 508G)

How we considered this complaint

20. We produced this report after examining relevant documents, including our final decisions on our two investigations into Mrs X's complaint, and our letters and correspondence with the Council.
21. Mrs X and the Council had an opportunity to comment on a draft of this report. We considered their comments before completing this report.

What we found

What happened

Our first investigation – [21 011 785](#)

22. We investigated a complaint from Mrs X that the Council failed to provide appropriate free transport to enable her adult son Mr Y to attend the college named in his Education, Health and Care (EHC) Plan. We found fault with the Council and it agreed to take appropriate action.

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23. Mr Y has an EHC Plan and had started a new four day a week college course in September 2021, at the college named in his Plan. He was 19 years old and so was a relevant adult learner. Mrs X applied for transport to college which the Council refused, saying Mr Y was not eligible for assistance as he was over 18. It offered to reimburse Mrs X's mileage for one year or provide a personal travel budget equivalent to the mileage rate. Mrs X explained she could not transport him to college due to work commitments and the budget was not sufficient to cover a taxi.
24. In May 2022, we found the Council at fault as:
- it failed to consider the requirements of s508F of the Education Act, that Mr Y had an EHC Plan and was a relevant young adult. The Council failed to decide whether it considered it was '**necessary**' for Mr Y to receive travel support to facilitate his attendance at college;
 - it failed to show how the discretionary mileage allowance/personal travel budget it provided could be used to ensure Mr Y attended college;
 - it failed to discuss with Mrs X whether transport would be provided at the time it agreed to name the college in the EHC Plan. It did not give her sufficient information to make an informed decision about the choice of college;
 - its policy failed to clearly set out its statutory duty to provide free transport if it was '**necessary**' for relevant adult learners with an EHC Plan; and
 - its adult social care team was aware the Council was not willing to provide Mr Y with transport to college. The Council should have considered its duties sooner under the Care Act.
25. As part of our recommendations the Council agreed, by 30 June 2022, to apologise to Mrs X and make a payment to Mr Y, to reassess Mr Y's application for school transport and to meet with Mrs X and Mr Y to consider the impact the lack of transport had on Mr Y's ability to attend college and complete his college course when deciding on his future goals.
26. By 31 August 2022 it agreed to review its post-16 transport policy to ensure it clearly set out the difference in its duties between sixth form and adult learners, including the Council's responsibility to provide free of charge transport where it was considered necessary for relevant young adults with an EHC Plan.
27. The Council apologised, made the agreed payment, and reassessed Mr Y's transport application. It agreed the transport was necessary to facilitate Mr Y's attendance at college, so it agreed to fund it. It failed to arrange a meeting with Mrs X and Mr Y. In mid-October, the Council told us its review of post-16 transport was still ongoing. The Council explained it needed to consult on the policy and have it approved by its cabinet. However, we concluded it should have been aware of this at the time it agreed to complete our recommendation by 30 August 2022. The Council provided us with a draft copy of the policy in October but failed to confirm when the policy would be finalised and in place. We were not satisfied with the lack of progress as, until the policy was amended, the Council may be making errors in other applications for post-16 education transport. Also, as the draft policy was not available to the public, families and young people may not be aware of the Council's duties and powers regarding education transport for those over the age of 16.

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28. As the Council failed to complete all the agreed actions despite our repeated requests and reminders, we opened a second complaint to consider if this failure had caused an additional injustice to Mr Y.
- Our second investigation – [22 011 825](#)**
29. As a result of our second investigation, the Council agreed to pay Mrs X and Mr Y £250 for the additional frustration caused by its failure to meet with them by 30 June.
30. Regarding the agreed review of the transport policy for post-16 and adult learners, the Council told us it had consulted its Parent Carer Forum on 19 October. It said the changes were agreed with a review of the full Council transport policy to start in January 2023.
31. It agreed to our recommendation which was to confirm, by 13 February 2023, when the revised post-16 transport policy would be finalised and approved by committee. We told the Council we expected the revised policy to be in place for the 2023/24 academic year and the Council agreed to this.
32. The Council has failed to complete this recommendation. This is fault.
33. The Council decided to review its school transport policy for all age groups and not just those in the post-16 age group. In February 2023 the Council told us the draft policy was undergoing compliance checks. It anticipated stakeholder consultation would begin after Easter 2023.
34. In June 2023 the Council again told us its education transport policy was undergoing compliance checks and that a full formal consultation would be undertaken before the implementation of the policy. It anticipated this would start in the Autumn 2023 term.
35. In November 2023 the Council told us it expects the policy will receive internal approval in November. There will then need to be a report to cabinet in December and a full stakeholder consultation in Spring 2024. The report will go to cabinet in April 2024 for a decision about implementation.

Conclusion

36. Where we find fault and make recommendations, we expect councils to carry them out within a reasonable time. This is important because, until changes happen, other individuals might be caused a significant and unnecessary injustice by the same fault. In addition, its delays in acting on agreed recommendations following our investigations could also undermine public trust in the Council's ability to operate a fair system of redress.
37. The Council agreed to the timescales in our draft decisions on both earlier complaint investigations. If a council is aware an action is likely to take longer, we expect it to suggest a different timescale before we finalise a decision. However, the Council should have had a policy that fully complied with the law (Education Act sections 508F and 508G) and the statutory guidance for both sixth form and relevant adult learners long before our involvement with this case. The transport policy statement must be published by the local authority by 31 May each year and must be clearly dated showing the academic year to which it applies. As a result, this further delay is unacceptable.

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38. The Council’s stakeholder consultation has not yet begun on its revised policy, despite assurances it would have been completed by Easter 2023 and earlier assurances it had begun this in October 2022. It now says the consultation will occur in Spring 2024 and the earliest the policy will be finalised, or approved by its cabinet will be April 2024. Therefore, the earliest the policy will be in place is 31 May 2024. The Council says this is because “unfortunately this has taken longer than anticipated”. This is a significant and unacceptable delay from the timescale first agreed following our earlier investigations.
39. The Council’s delay in introducing a revised policy for post-16 learners is likely to have had consequences for other individuals, especially adult learners with EHC Plans. As a result, this public report will highlight to the public in its area that the post-16 transport policy is flawed. It does not differentiate between the Council’s duties to sixth form learners and relevant adult learners and has been incorrect for some considerable time.

Recommendations

40. 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)
41. The Council should provide us with evidence to show that it has issued:
- a report to cabinet in December 2023 on the new policy;
 - the full stakeholder consultation in Spring 2024;
 - the report to cabinet in April 2024 for a decision regarding implementation; and
 - the revised post-16 transport policy and made it available to the public by 31 May 2024.
42. The Council has accepted our recommendations to remedy the complaint.