

Report by the Local Government Ombudsman

**Investigation into complaints against
Wirral Metropolitan Borough Council
(reference numbers: 15 018 169, 15 019 136,
15 020 236, 15 020 740)**

2 February 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.

Investigation into complaint numbers 15 018 169, 15 019 136, 15 020 236 and 15 020 740 against Wirral Metropolitan Borough Council

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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 & Mrs A: complainants in the case 15 018 169 and parents of a 9 year old son who attends a community special school
- Ms B: complainant in the case 15 020 740 and parent of a 10 year old son who attends a unit at a primary school for children with special educational needs
- Mrs C: complainant in the case 15 019 136 and parent of a 13 year old son who attends a mainstream school
- Ms D: complainant in the case 15 020 236 and parent of a 13 year old son who attends a community special school

Report summary

Council Education – school transport

The Council provided specialist home to school transport to some families whose children have disabilities or special educational needs. In October 2015 after reviewing the provision it told several of these families it would no longer provide them with school transport. The Council went on to hear many appeals from parents. This report covers four families who complained to the Ombudsman when their appeals were not upheld. The families felt their personal circumstances and the child's needs had not changed from the time when the Council first provided their child with school transport. They felt the Council's decision was flawed. They had given the Council evidence about their child's inability to walk to school safely due to health and safety concerns as a result of the child's disability or special educational need.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice the Council should:

- apologise to all four families for the identified faults. The Council has agreed to our recommendation.
- pay Mr & Mrs A £300, Ms B £100, Mrs C £600 and Ms D £500 for the uncertainty, distress and disruption caused. This would also acknowledge the additional costs the families incurred when they had a legitimate expectation their child would receive school transport for the remainder of the school year. The Council has agreed to our recommendation.
- make new school transport decisions for families A, B, and D. It should properly explain how it came to those decisions, what information it took into account including what factors it considered when it decided it was reasonable to expect the parent to accompany the child and why it disputes any supporting evidence the parents supplied. (The Council recently told Mrs C it will provide her son with specialist transport for the 2016 school year.) If the Council was again to refuse to provide school transport, or the parent disagrees with the arrangements, this would entitle all of these families to new appeals which should be held under improved administrative procedures and held by officers who have not previously considered these appeals. The Council has agreed to our recommendation.
- review the decisions it made on the additional nine appeals it identified during the investigation, which it refused. This is because of the faults we have identified. It should provide evidence to us of how it has reconsidered each case and how it has taken into account the information the appellants provided in their case and whether its decisions are sound. The Council has agreed to our recommendation. The Council says two of the children are now in mainstream school and not eligible for specialist transport and two

have moved to new special schools and are now eligible for specialist transport. It says it will send application forms to the remaining families and, if submitted, the Council will reconsider them.

- review its school transport application form for children with special educational needs and/or a disability to include an element to show if a family is on low income, defined as receiving the maximum Working Tax Credit or free school meals. The Council agreed to this recommendation and has already implemented the changes.
- review its school transport appeal procedure. It should ensure it shows how it has taken into account individual circumstances and the supporting evidence supplied and explain the rationale for its decisions. It should take notes of the Appeal Panel's deliberations and decision making to ensure its decisions can be audited. It should 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 Council says it will meet this recommendation by taking more extensive notes of appeals and provide more comprehensive feedback to individuals in its decision letter. It will also state all the documents the Council has considered such as the Statement and Education, Health and Care Plan.

Introduction

Family A – 15 018 169

1. Mr & Mrs A complain there was fault in the Council's decision to remove the school transport it had provided for their disabled son since September 2015.
2. They complain the Council's school transport appeal failed to properly consider their son's inability to walk the 2.38 miles to his special school before deciding to refuse their appeal.
3. They say their circumstances had not changed from when the Council originally agreed to provide him with school transport in September 2015. They would like the Council to reinstate his school transport.

Family B – 15 020 740

4. Ms B complains there was fault in the Council's decision to remove the school transport it had provided for her disabled son since September 2015.
5. In addition, she complains the Council's school transport appeal failed to properly consider her son's inability to walk the 2.6 miles to his school before deciding to refuse the appeal.
6. She says their circumstances had not changed from when the Council had originally agreed to provide him with school transport in September 2015. She would like the Council to reinstate his school transport.

Family C – 15 019 136

7. Mrs C complains there was fault in the Council's decision to change the school transport it provided for her disabled son from a taxi to a public transport bus pass. Her son attends a school 3.73 miles from their home.
8. She complains the Council's school transport appeal failed to properly consider the suitability of him travelling to school by public transport by failing to consider the safety of the route and his inability to travel independently safely.
9. She says her son's circumstances had not changed from when the Council had originally agreed to provide him with school transport in September 2014. She would like the Council to reinstate his taxi.

Family D – 15 020 236

10. Ms D complains there was fault in the Council's decision to remove the school transport it had provided for her disabled son since September 2014.
11. She complains the Council's school transport appeal failed to properly consider her son's inability to walk the 0.9 miles to his special school before deciding to refuse her appeal. She had told the Council her son received the higher rate of the mobility component of Disability Living Allowance (DLA) but it said he had no mobility issues.

12. She says their circumstances had not changed from when the Council originally agreed to provide him with school transport in September 2014. She would like the Council to reinstate his school transport.

Legal and administrative background

The Ombudsman's role and powers

13. The Ombudsman investigates 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)*)
14. The Ombudsman 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*)
15. The Ombudsman 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)*)

The law and the statutory guidance about school transport

16. The Government issued statutory guidance in July 2014 to local education authorities on home to school transport. It refers to the requirements set out in the Education Act 1996.
17. The law says 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*)

18. The statutory guidance 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 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)*
19. 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)*
20. The statutory guidance says:

"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)

The Council's Home to School Transport Policy for Children and Young People age 5-16

21. In 2013 the Council had a school transport policy which provided children with special educational needs transport to their nearest appropriate special school or special class based in a mainstream school. In July 2013 the Council agreed a new policy, applicable from September 2014, which would be less generous. The Council agreed that pupils it had assessed under the existing policies before September 2014 would retain their current school transport provision until they left their current school.
22. The September 2014 Policy said where a young person is able to access and use the public transport network safely they will be expected to do so. When they are not able to walk because of their special educational needs, disability or mobility they will be entitled to free transport.
23. The Council reissued its school transport policy in March 2015. For children with special education needs and/or disability, it says parents are required to submit an application form for an assessment for eligibility for free transport. The decision will be based on information provided which may include information from health practitioners, educational psychologists, the school's headteacher, children's social care and the input of the student.

24. It says children with special educational needs and/or disabilities are entitled to free transport however far they live from the school if:
- they have an Education, Health and Care Plan (EHC Plan) (introduced in 2014) or a Statement of special educational needs that says the Council will pay transport costs.
 - they cannot walk because of their special educational needs, a disability or mobility problem.
25. It makes clear not all children with an EHC Plan or Statement require free transport provision. Where a young person is able to access and use the public transport network safely they will be expected to do so. Where they are not able to walk because of their special educational needs, a disability or mobility problem they are entitled to free transport.
26. It says as a general rule it will treat routes without pavements and street lighting as unsafe for children and young people.
27. For those children in mainstream schools who currently receive specialist transport, the Council offers Independent Travel Training. It says this scheme aims to give students with special educational needs and/or disability the key skills and confidence to travel independently using public transport to and from school. It provides individuals with their own personal travel programme and assistance from a travel trainer to learn how to travel independently to school. The Council works one to one with the student and the trainer accompanies the child to school over an extended period until they are ready to make the journey independently.
28. It says following the assessment process, it will notify parents of its decision regarding transport provision. It will assess eligibility annually for that provision. As it is based on the child's needs, the Council says it cannot consider parents' work commitments.
29. The Council operates a two stage review and appeal process for school transport. Parents can appeal in writing within 20 working days of receiving notification of the Council's decision not to provide transport or against the transport arrangements it has agreed to make. Parents need to supply new information not considered at stage one of the appeal if their appeal is to progress to stage two. An independent appeal panel will consider the application for a stage two review and give written notification of the outcome setting out:
- the nature of the decision reached;
 - what factors were considered;
 - how the review was conducted;

- information about other departments and/or agencies if they were consulted as part of the process;
- the rationale for the decision reached.

How we considered these complaints

30. This report has been produced following the examination of relevant files and documents and interviews with the complainants.
31. The complainants and the Council were given a confidential draft of this report and invited to comment.

Investigation - general

32. This investigation covers complaints by four families. All the children have special educational needs and have either a Statement or an EHC Plan. They all had appeals and the appeals were refused. The Council says in total 13 appeals were refused in the period covered by this investigation. They involved transport to six different schools in the Council's area.
33. Two of the families, A and B, only applied for school transport in the summer of 2015. Two of the families, C and D had received specialist school transport from September 2014. Therefore, the Council's commitment in 2013, not to remove specialist transport provision from those receiving it in 2013 until they change schools, does not apply to these four cases.
34. The Council says it had intended to carry out its annual review of eligibility for school transport in May 2015 but due to staff shortages it did not do so until October 2015. The Council says it had not established whether any of the children were eligible for school transport by September 2015 because of delays in carrying out its annual review of eligibility.
35. On 27 August 2015 the Council wrote to families, including these four, to say it had *"finalised the transport arrangements for [the child's name] to and from [the school's name]"*. It then provided details of what transport it would provide. The letter went on to say *"on-going eligibility for transport provision will be assessed during the Autumn Term. This may result in the transport being withdrawn or a different form of transport being provided...Any changes would come into effect from January 1st 2016"*. It said the outcome of the assessment would be communicated to parents and carers before 31 October 2015.

36. For those families who already received specialist school transport, families C and D, the Council believes the letter explained it had not established if those children were eligible for school transport in the school year September 2015 to July 2016. It did not do so until October 2015. It believes the section of the statutory guidance which says children should remain eligible for the entire school year in which the eligibility assessment was made does not apply.
37. The Council says when it reviewed transport in October it applied its policy and it decided not to “re-provide” it to families C and D.
38. The Council says for those families that were new to specialist school transport provision, families A and B, the Council had not properly assessed their applications before the start of the September 2015 term. It says its August letter gave them school transport temporarily from September 2015 pending the outcome of the eligibility review. It had not established their eligibility to receive school transport until October 2015 when it decided families A and B were not eligible.
39. The Council says in future it will carry out these annual reviews of school transport eligibility sooner.
40. The families were not happy and appealed the Council's decision at the two stages of its appeal procedure.
41. The Council says when it conducted the appeals it considered all the information the applicants sent in and the child's Statement or EHC Plan. It did not make any notes of the deliberations at either stage of the appeal. It says the decision letters it sent to parents after the appeal contained the reasons for its decision in each case.
42. All four families lost their appeals in January and February 2016. In all but one case the Council told the parents it would withdraw the child's specialist school transport after one more school day as it was just before the half term break. In the fourth case the Council removed the specialist transport provision six school days later.
43. All the parents have said this caused their children distress and they could not understand the Council's decision as their personal circumstances had not changed.

Conclusions - general

The Council's policy of 2015

44. The Council accepts there is almost no difference in its 2015 policy compared to the 2014 policy, apart from a reference to the Independent Travel Training. As there was no significant change in the policy it was reasonable for families C and D to have expected that, if their circumstances and the child's needs had not changed, they would continue to be entitled to free school transport in the way it had previously provided it over the last year. If the Council was going to apply the policy in a different way to how it had in 2014 it should have been clearer with parents. A failure to make this clear and be transparent about a change in decision making was fault.

The Council's letters to parents of 27 August 2015

45. The Council believes this letter is clear that it had not assessed eligibility or agreed eligibility for the school year 2015 to 2016.
46. The letters to the two new applicants, families A and B, did not make it clear to someone receiving school transport for the first time that the transport the Council had arranged for their children from September 2015 was only being provided temporarily as it had not yet assessed their eligibility. It states their "**on-going** [our emphasis] *eligibility for transport provision will be assessed in the autumn term*". This strongly suggests the Council found these families to be eligible at the date of this letter. If the Council had not yet determined families A and B to be eligible by September, we are not clear under what power the Council was acting in arranging their transport from September 2016. The Council says the Ombudsman is penalising it for its decision to support parents prior to it establishing their eligibility. It says it proved to be the right course for most parents after completing their eligibility assessment. It says because of our comments it will not provide transport in future while its eligibility and appeal process is ongoing.
47. The Council should have made transport eligibility decisions before the start of the September term in 2015. Its failure to do so has resulted in it unfairly raising parents' expectation that they would receive school transport for the remainder of the school year. These parents have told us they may have made different choices about the school their child attends if they were aware the Council would not have provided school transport. In addition it has caused unnecessary change for children with autism who are badly affected by changes to their routine.
48. For those families who had received transport since September 2014, families C and D, the Council believes the letter says it would temporarily provide transport. We disagree. When the Council wrote to explain it was reviewing their entitlement to school transport in October 2015 it did not tell parents it was going to apply its policy in a different, stricter way. A failure to give parents clear information was fault and led them to expect, as their circumstances had not changed, the review in the autumn would not affect their child's provision.

The Council's review of eligibility in October 2015 and its decision to remove transport provision mid school year

49. The Council says families A and B made late transport applications and therefore it would not have determined them before the start of the September term. However, the Council's policy does not specify a deadline by which parents should make on time applications. Its application form for specialist home to school transport says:

"Please note 10 days notification of any request for transport is required by the transport team".

50. The Council received Mr & Mrs A's application on 14 July and Ms B's on 7 July. Therefore they were not late applications according to its application form and the Council should have determined them by the start of term in September. Its failure to do so was fault. This caused the families and the children an injustice as the Council provided transport in

September and then removed it which was disruptive. The Council accepts it should have reviewed eligibility before September. In future it will not provide school transport until it has established eligibility.

51. The statutory guidance discourages councils from changing school transport provision mid-school year as it is disruptive to young people's education.
52. The Council says it did not remove the transport mid-year when it wrote in October to say provision would stop in January. This is because it says it had not yet established the children's eligibility for the 2015 to 2016 school year. The Council's decision to define when eligibility was established in October 2015 was because of its own failure to carry out the review sooner. This goes against the statutory guidance principle for councils to consider the potential impact on the child and to avoid disruption to their education mid school year. The families had a legitimate expectation they would receive transport for the remainder of the school year.
53. The special educational needs and disabilities of the children from the four families made it difficult for them to accept change. The children benefitted greatly from routine. These children were affected more by a sudden change to their school transport provision mid year than other children of a similar age without those special educational needs. In most cases, the Council removed the child's transport provision with one school day's notice (10 calendar days' notice including half term) when their appeals failed. The families in our investigation have explained how this led to distress in their children. The parents had to make alternative arrangements to transport their children to school, at their own expense. The Council's decision to remove transport provision mid year was fault. It did so without considering the potential impact on these children of making a change mid year. It caused the children distress and in some of the cases it caused disruption to their education.

The appeal process

54. The Council's policy says it will explain the rationale for its appeal decisions.
55. In the four cases, the Council repeatedly said the children did not have mobility problems and could walk to school accompanied as necessary. In Mrs C's case it said her son could travel to school by public transport instead of using specialist transport.
56. Although the evidence the parents presented at their appeals brought into question the Council's decision, the Council failed to record its consideration and deliberation during the appeals. That was fault. It prevents independent assessment of what weight it gave to the supporting evidence and why it discounted it. As it failed to make suitable notes we cannot say it properly considered the appeals and the information provided. We cannot say it considered only relevant, and no irrelevant, information. The Council says in future it will keep a more detailed decision record at the assessment and both stages of its appeal decisions.

57. Parents expressed concern about their child's ability to travel independently, and the child's health and safety or mobility issues if they walked to school. The Council's decision letters failed to address the specific matters raised by the parents and their supporting evidence. That was fault. The Council says in future it will provide more detailed feedback to parents in its appeal decision letters.
58. The Council's appeal decision letters were brief and only listed the documents it said it had taken into account. The Council told us it had also considered the children's Statements and EHC Plans and their entire special needs file as part of its decision. The decision letters did not say the Council had considered the child's Statement, EHC Plan or file and there is no evidence from the decision letter that these documents were considered during the appeals. The Statements and EHC Plans would contain valuable information about the child's needs. This may include any health and safety concerns associated with their special educational needs which might impact on their ability to walk to school or travel independently. A failure to demonstrate consideration of these documents was fault. The Council says in future it will state in its decision letter it had considered the child's Statement or EHC Plan.
59. In each case the Council said the child had no mobility issues. However mobility issues are only one element of special educational needs transport. The statutory guidance and the Council's policy are clear that such children may require school transport because of associated health and safety issues related to their disability or special educational needs, not only their mobility. The Council says it considered the other factors that parents raised including the children's special educational needs, not just physical mobility. It says it just failed to keep detailed notes and record these considerations in its decision letters. However without supporting evidence, we cannot say the Council properly considered these matters. A failure to consider and address the possible health and safety issues raised was fault.
60. The Council's failure to explain the rationale for its decisions at appeal was fault and not in accordance with its policy. It did not justify its decision to dispute the evidence the parents had provided to the appeal of their child's health and safety issues related to their special educational needs or disability, or any mobility issues. The Council agrees its decision letters could have been more detailed and will address this in future. However it says this cannot be used to imply the decision is flawed. Without suitable evidence we cannot say the decision was properly taken and therefore there was fault.
61. Because there was fault in process the Council followed, it calls into question the appeal decisions it reached. However, on the available information, and due to the faults in recording the deliberations of the decisions, we cannot say what the decisions would have been if the Council had taken them correctly. The exception is Mrs C's case where we believe the decision would have been to provide transport.

Investigation and Conclusions for complaints from Families A, B, C and D

Investigation of complaint from Family A – 15 018 169

62. Mr & Mrs A's 9 year old son began attending a community special school in September 2015. The school is 2.38 miles from their home. He has moderate learning difficulties and attention deficit hyperactivity disorder and has an EHC Plan.
63. His EHC Plan says he does not like to walk very far. He is more able to do this in school but too much walking can cause a 'meltdown' at home. His behaviour at times can be difficult and aggressive.
64. On 14 July 2015, prior to starting at his new school in September, the Council received Mr & Mrs A's completed application form for specialist home to school transport.
65. The Council wrote to Mr & Mrs A on 27 August 2015. The letter said it would provide their son with a seat on a minibus and an escort from the first day of term.
66. The Council carried out its review in October 2015 and decided Mr & Mrs A's son was not eligible for school transport. It wrote to explain it was withdrawing it because they lived less than three miles from his school. It agreed to continue to provide the school transport until the end of 2015. Mr & Mrs A say they were confused as their circumstances had not changed since they applied a few weeks earlier.
67. Mr & Mrs A's appeal was heard at Stage 1 and Stage 2 of the Council's transport appeal procedure. Mr & Mrs A explained the Council had only just decided to provide their son with transport. They said a change of routine would make him frustrated and anxious. They explained due to his special educational needs he does not like to walk. They said the specialist minibus passed their home whether it collected their son or not. They provided letters of support from:
 - a Child and Adolescent Mental Health Service Therapist who said: *"He also finds walking difficult due to the sensory noise of traffic and his spacial awareness"*. The Therapist explained Mr & Mrs A worried about the impact of sensory triggers which means they might not be able to keep him safe. He is very impulsive and would run off.
 - a Community Paediatrician who said: *"[their son] will not walk any distance and I feel it would be appropriate for him to continue to be offered school transport"*.
 - the Headteacher of the School who said: *"[the] School is an extremely difficult school to get to on public transport"*. She said he is an extremely vulnerable young boy who fails to understand the simplest of language and concepts.

68. The Appeal Panel decided on 11 February 2016 to refuse the appeal. The decision letter said it had considered the supporting evidence. It said he had no mobility issues, is safe to travel to school accompanied by an adult and they live less than three miles from his school. The Council provided his transport until 12 February 2016. The following week was the half term break.
69. Mr & Mrs A have since asked a relative to take their son to school by car. They say their son was left distressed by the change.

Conclusions for complaint from Family A – 15 018 169

70. Mr & Mrs A made a new application for school transport in the summer of 2015. A few weeks later the Council provided their son with specialist school transport from September. The Council had not clearly explained this was temporary or that it had not yet established their eligibility. Mr & Mrs A and their son had a reasonable expectation they would continue to receive transport for the remainder of the school year as their circumstances had not changed. The Council raised their expectations and their son was later caused distress as it removed the transport with one school day's notice.
71. The Council's letter following Mr & Mrs A's appeal did not show how it had considered the supporting evidence they had provided. The response only stated the Panel had considered it. The decision letter said their son had no mobility issues. However it failed to address their argument, and the supporting evidence, that because of associated health and safety issues related to his special educational needs or disability, the Council could not reasonably expect him to walk to his special school. There are no details as to what weight the Council put to their evidence and why it discounted it. The child's mobility was not the only consideration the Council had to make.
72. As a result there was fault in how the Council considered their appeal which brings the decision into question. We cannot know whether the decision itself was incorrect, only that there is no evidence it was taken correctly, balancing all the evidence and taking into account all relevant information, and reaching a reasoned view. Therefore it should remake the decision following the requirements of the statutory guidance and its own policy. It should also pay Mr & Mrs A £300 for the distress and disruption caused. This would acknowledge the costs they incurred as they had a legitimate expectation their son would receive school transport support for the remainder of the school year.

Investigation of complaint from Family B – 15 020 740

73. Ms B is a single mother. Ms B's 10 year old son began attending a unit at a primary school for children with special educational needs in September 2015. The school is 2.6 miles from her home. The Council says it is 2.5 miles but an online search and the only reference to distance in the appeal paperwork says it is 2.6 miles. He has autistic spectrum disorder and learning difficulties. His EHC Plan in 2015 says he has a high level of anxiety which was impacting on his willingness to go to school. The EHC Plan said he needed to continue to expand his independence such as learning to cross the road safely.
74. Ms B says during the process of determining a suitable school for her son the Council led her to believe he would receive school transport to his new school.

75. Ms B applied for school transport in the summer of 2015. The application form did not ask her to declare if she was a low income family, defined as receiving the maximum Working Tax Credit or in receipt of free school meals.
76. The Council's general application form for school transport has a section asking about a parent's income. The application form for those wishing to have specialist transport for children with special educational needs and disability does not ask about parent's income or whether they receive free school meals. The Council received her application for specialist transport on 7 July 2015.
77. The Council wrote to Ms B on 27 August 2015. The letter explained it would provide her child with a seat in a minibus with an escort from the start of term in September.
78. The Council carried out its review in October 2015 and decided Ms B's son was not eligible for school transport. It wrote to explain it was withdrawing it because they lived less than three miles from his school. Ms B says she felt confused as her circumstances had not changed in the few weeks since she had applied. She challenged the Council's decision.
79. Ms B's appeal was heard at Stage 1 and Stage 2 of the Council's transport appeal procedure. Ms B said she accepted a place at the new school on the advice of the Council as he was struggling in his previous school. She said because of her son's autism and learning difficulties it was not safe for him to walk to school and he was not aware of the dangers of roads. She said the escort had taken him to the minibus and one day he had tried to run away. He put himself in danger.
80. The Panel decided on 11 February 2016 to refuse the appeal. It said Ms B's son had no mobility issues, was safe to travel accompanied by an adult and her home was less than three miles to school. It said it had considered the evidence Ms B had presented. The Council provided his transport until 12 February 2016. The following week was the half term break.
81. Ms B says because of the short notice her son felt distressed. She has since had to rely on friends to help her get her son to school.
82. When we spoke to Ms B we wondered if she may qualify for the two mile walking distance, rather than three mile, as a result of possibly being on a low income. We asked the Council if it had considered her income. The Council said as part of its eligibility review it looked at its list of those receiving free school meals. Ms B's child does not receive them. As a result of our investigation the Council sent Ms B a new application form for her to detail her income in case she qualified under the low income category.

Conclusions for complaint from Family B – 15 020 740

83. Ms B made a new application for school transport in the summer of 2015. A few weeks later, in September 2015, the Council provided her son with specialist school transport. The Council had not clearly explained this was temporary or that it had not yet established his eligibility. Ms B and her son had a reasonable expectation they would continue to

receive it for the remainder of the school year as their circumstances had not changed. It raised her expectations and her son was later caused distress as the Council removed the transport with one school day's notice (albeit the following week was half term so there was a period of 10 days prior to Ms B's son attending school without specialist school transport).

84. The Council's specialist school transport application form fails to ask parents for information to enable it to determine if a family is on a low income. This would allow those families on low income to qualify under different school transport rules. The Council's decision to only search its records for those in receipt of free school meals was not sufficient. The Council has since reviewed and improved its specialist school transport application form to request appropriate financial information from families.
85. During the appeal, the Council says it considered Ms B's son's EHC Plan but there is no reference to it having done so in its decision letter and there are no notes of the appeal consideration.
86. There was fault in how the Council considered Ms B's appeal which brings the decision into question. We cannot know whether the decision itself was incorrect, only that there is no evidence it was taken correctly, balancing all the evidence and taking into account all relevant information, and reaching a reasoned view. Therefore it should remake the decision following the requirements of the statutory guidance and its own policy. The Council should pay Ms B £100 to reflect the distress and disruption she and her son were caused by the faults. This would acknowledge some of the costs Ms B incurred as she had a legitimate expectation her son would receive school transport support for the remainder of the school year.

Investigation of complaint from Family C – 15 019 136

87. Mrs C's 13 year old son attends a mainstream secondary school. He has autistic spectrum disorder and attention deficit hyperactivity disorder. The school he attends is 3.73 miles from his home and so is beyond the statutory school walking distance. Therefore the Council must arrange suitable school transport for him.
88. He has a Statement with full-time support, including lunchtimes, from a teaching assistant. His Statement says he can only cope with simple instructions and requires a significant amount of adult support to regulate his behaviours. It says at times he can display a reduced awareness of danger which can be heightened by his concentration difficulties. He needs access to a secure and predictable environment that emphasises routine and has clear boundaries.
89. Since 2014 the Council provided him with school transport using a taxi and an escort. His School's Special Educational Needs Officer wrote to the Council in 2014 to support his application. She explained Mrs C had tried to use the designated school bus. However, it left her son very distressed as he could not cope with the pressures of the experience including the noise, money handling and being fully independent. She pointed out his Statement said he had a reduced awareness of danger, concentration difficulties and

needed access to a secure and predictable, structured environment. She said the provision of specialist school transport would set him up for the day.

90. The Council wrote to Mrs C on 27 August 2015. The letter explained it would provide her child with a seat in a taxi with an escort from the first day of term.

The Council carried out its review in October 2015 and decided Mrs C's son was no longer eligible for specialist school transport. Instead it would provide him with a free public travel pass. It offered him a place on its Independent Travel Training programme. Mrs C says she was not happy because she felt her son was not yet ready to travel to school independently. To get to the school bus, or to take the train, he would have to walk around one mile, some of which was down an unlit track. She says she refused the Council's offer of Independent Travel Training as she felt her son would not be able to successfully complete the course given his difficulties as identified in his Statement. She said he would be put off trying in the future if he failed, due to his autism. She challenged the Council's decision.

91. Mrs C's appeal was heard at Stage 1 and Stage 2 of the Council's transport appeal procedure. Mrs C explained her son has autism, suffers from anxiety, cannot manage crowds or smells and has no road sense. She explained the nearest bus stop is a mile from her home down an unlit road with no pavements. She provided a letter of support from his taxi escort which said he can get quite anxious in the taxi if there is a lot of noise and can be unsettled if it carries on for too long. She says the Council's annual review of her son's Statement had not discussed him needing to change his specialist transport provision.
92. The Appeal Panel decided on 11 February 2016 not to uphold her appeal. It said the Council was right to offer her son a free travel pass instead of specialist transport provision. It then went on to say that where a young person is able to access and use the public transport network safely it will expect them to do so. It also said when determining whether a child can walk due to their special educational needs, disability or mobility problems, the Council needs to consider if it can reasonably expect the child to walk to school if accompanied and is it reasonable to expect the child's parent to accompany them. The Council provided specialist transport for Mrs C's son until 12 February and then removed the service (albeit the following week was half term so there was a period of 10 days prior to Mrs C's son attending school without specialist school transport).
93. The Council told us the route Mrs C's son would take to school was a walk of one mile to public transport, a small part of which is unlit. He would then take a train for one stop and get a bus for a further two stops. It considers this would be a safe, straightforward and relatively stress free route.
94. Mrs C's son tried to get to school using the school bus, not the route suggested by the Council using public transport. It did not go well. She still believes her son is not yet safe to travel to school by public transport. Instead she took him to and from school by car. His school said this has caused him to be upset.

95. The School's Special Educational Needs Officer wrote to the Council in April 2016. The Officer told the Council Mrs C's son was not capable of travelling independently. When he had travelled to school using the school bus it had not gone well and he was left distressed. He could not cope with the pressure of the situation including the noise. She said the Council was expecting him to be fully independent which he had never been before. She said when Mrs C tried to drop her son off at the end of the road to get the school bus he was nearly run over after he walked into the middle of the road without consideration for his own safety. The Officer said the distress of not having the specialist school transport was causing him to have more 'meltdowns'. She referred to his needs, identified in his Statement, including his reduced awareness of danger. She felt he still required specialist transport until he developed the necessary skills to keep himself road safe.
96. We have spoken to the School's Special Educational Needs Officer. She told us the other child who used to share the taxi with Mrs C's son continued to receive this support. She says the same taxi continued to travel past Mrs C's house.
97. The Council says it considered the comments made by the School's Special Educational Needs Officer in April 2016 as a second appeal. It decided to reinstate his specialist transport from mid May until the end of July 2016, after which it said Mrs C would have to apply again. It recommended she take up the offer of Independent Travel Training.
98. Mrs C reapplied for her son to receive specialist school transport from September 2016. The Council has agreed to continue providing him with a taxi from September 2016 to give him additional time to develop his independent travel skills through travel training. It does not consider its original decision to be flawed.

Conclusions for complaint from Family C – 15 019 136

99. 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. The Council says the journey it suggested by train and bus was relatively stress free. However, the evidence shows soon after Mrs C lost her appeal his school told the Council he was caused distress when using the school bus. His Statement and letter of support from his escort contained information about his reduced awareness of danger and issues he has with noise. However the Council's decision letter of February 2016 does not show how it weighed these points when it decided public transport was a suitable arrangement for her son. That was fault. The Council has agreed to produce a more detailed decision letter in future.
100. The School's Special Educational Needs Officer wrote to the Council in April 2016 to restate her view from 2014 that Mrs C's son had not yet developed the skills to keep himself road safe, and he had suffered distress using the school bus. This led the Council to reinstate his transport.
101. The Council says it made its appeal decision in February 2016 based on the information available at the time. As the Council says it had access to the child's full special educational needs file at the appeal we would have expected it to be aware of the School

Special Educational Needs Officer's earlier letter which is almost identical to the one she presented in 2014. As nothing had changed since his appeal two months earlier, this shows the Council's original decision making was flawed.

102. The Council says during the second appeal the 'travel trainer' advised the appeal the walking route was probably not within the child's capacity at that point as he had not been 'travel trained'. The Council says as Mrs C had refused its offer of independent travel training for her son, it was no surprise he found the journey by school bus distressing. It says independent travel training is a very thorough personalised process which takes the student through every stage of home to school travel in great detail over a period of time, and has been very successful with other young people with similar needs to Mrs C's son.
103. The Council's policy is to offer support with independent travel training. It does not require families to accept this support. We remain of the view the original decision of the Council's Appeal Panel in February 2016 was flawed.
104. The Council decided in February 2016 Mrs C's son would be safe using public transport when the evidence did not support its view. It felt the journey he could use (involving a walk of a mile down a partly unlit and unpaved route, a train and bus) was relatively straightforward. The Council's policy says it will generally consider routes without a pavement and street lighting as unsafe. However in its decision to Mrs C the Council did not explain why in her son's circumstances, a young person with special educational needs, it had decided this type of route was safe. The Council also appears not to have taken into account that his Statement says he can only cope with simple instructions and he requires a significant amount of adult support to regulate his behaviours. Nor does it seem the Council considered the evidence of his escort who said he reacted badly to noise.
105. The Council's policy is that where a young person can access and use the public transport network safely they will be expected to do so. However, the Council had no evidence to show that Mrs C's son could do so safely. It had received evidence from his Statement and his taxi escort that he could not do safely. The Council considered independent travel training would lead to Mrs C's son being able to use public transport safely. However this was speculation about what might happen and should not have been considered as part of the Council's decision regarding eligibility. As it failed to justify its reasons for its decision in light of the evidence, its decision was flawed. Although the Council has since put his transport provision back in place, Mrs C's son was without suitable transport provision for the equivalent of a school term. This caused Mrs C's son distress and disruption and Mrs C incurred expenses taking her son to school during that period. The Council should pay Mrs C £600 to acknowledge the cost and time and trouble she was put to transporting her son to school for a term and for the distress and disruption caused to her son. It says it has reinstated specialist transport for Mrs C's son to provide him with more time to develop independent travel skills through training in the coming year.

Investigation of complaint from Family D – 15 020 236

106. Ms D's 13 year old son began attending a community special school in September 2014. The school is 0.9 miles from their home. He has moderate learning difficulties, autistic spectrum disorder and significant medical/physical difficulties.
107. His Statement says he needs adult assistance with all aspects of self care. He dislikes loud noises. In the Annual Review of his Statement in April 2015 he was given a target to be able to walk along a busy corridor by himself. It noted his needs had not changed significantly. In his own written comments to the Annual Review, Ms D's son said next year he would like to achieve walking to school by himself.
108. Ms D applied for school transport in April 2014 and was successful. The Council provided her son with specialist transport on a minibus.
109. The Council wrote to Ms D on 27 August 2015. The letter explained it would provide her child with a seat in a minibus with an escort.
110. The Council carried out its review in October 2015 and decided Ms D's son was not eligible for school transport. Ms D challenged the Council's decision.
111. Ms D's appeal was heard at Stage 1 and Stage 2 of the Council's transport appeal procedure. Ms D said her son's circumstances had not changed since September 2014. She said her son has no idea of road safety and was very vulnerable. She said he was very anxious and does not cope well with changes to his routine. She said her son received the higher rate of the mobility component of the Disability Living Allowance (DLA) because his disability means he refuses to walk. The Government's website says this rate of DLA is for children who cannot walk or who can only walk a short distance without severe discomfort or becoming ill.
112. Ms D provided letters of support from:
 - her son's Consultant Community Paediatrician who said: *"[he] is a very reluctant walker even in day to day life.....there are significant concerns that [he] doesn't have the perception of danger and common sense skills at this time to be able to walk to school by himself"*. The doctor said Ms D's son can be badly affected by changes in routine which affect him emotionally and occasionally have led to him missing school.
 - the Headteacher at her son's School who said: *"All of [his difficulties] will significantly impact negatively on his ability to travel to and from school independently"*. She said he does not like loud noises and could easily become distressed if walking by a busy road. She said he would struggle to remember basic rules of the road. In addition, a change to his routine will cause severe anxiety. *"Our assessment would be at this current time, [he] is not able to travel to and from school safely."*

113. The Panel decided on 21 January 2016 to refuse the appeal because it said he had no mobility issues, was safe to travel accompanied by an adult, and their home address is less than three miles from school. The Council removed his transport provision on 29 January.
114. The Council told us its policy does not take account of whether someone receives the higher rate of mobility DLA. The Council pointed out in his Annual Review, Ms D's son wanted to be able to walk to school independently from next year.
115. Ms D says her son continues to refuse to walk and she does not drive. She has asked her mother to help her and pay her expenses. However when there is no one available to drive her son to school she pays for a taxi.

Conclusions for complaint from Family D – 15 020 236

116. Ms D's son had received specialist transport since 2014. When the Council held its review of eligibility in October 2015 it did not make clear to parents such as Ms D that although their circumstances had not changed, and the policy was virtually unchanged from 2014, it was now going to apply its policy differently and apparently more strictly. Therefore without that information Ms D had a reasonable expectation that as her circumstances and her son's needs had not changed he would continue to receive the specialist transport.
117. Ms D explained her son received the higher rate of the mobility component of DLA. Therefore there were indications that professionals and the Department for Work and Pensions had concluded that Ms D's son had significant mobility problems. The Council says its policy does not take into account DLA as part of the assessment process. When the Council is aware a child is receiving the higher rate of the mobility component of DLA it should consider if this is evidence of the child having mobility difficulties.
118. Entitlement to this mobility benefit would not lead to an automatic entitlement to free school transport. However, it is relevant information for the Council to consider when determining eligibility for school transport due to a child's alleged mobility problems. The law and statutory guidance for school transport says eligibility for free school transport is based on the needs of the child and it does not preclude provision where a child receives a particular benefit or a parent has a higher income.
119. Following a question in the House of Commons in March 2016, the Department for Education explained:
- “Being in receipt of the higher rate of the mobility component of Disability Living Allowance (a benefit with different eligibility criteria and assessment process administered by the Department for Work and Pensions) does not necessarily confer eligibility for free home to school transport but neither does it preclude it if the conditions above are met.”*
120. Ms D's son told his last Annual Review of his Statement that he would like to walk to school independently. The Council says it considered this comment and other matters too. The rest of his Annual Review said his needs had not changed.

121. The Council's decision was against the views of his Consultant Paediatrician and his Headteacher both of whom said he could not walk independently to school and it was unsafe for him to do so. These professionals raised issues with the Council that he could not reasonably be expected to walk to school because of his mobility problems or because of associated health and safety issues related to his special educational needs. The Council's decision letter relates to mobility but not to the additional health and safety issues raised. The Council has not recorded its reason for disputing the views of these professionals as there are no minutes of the appeal and it has not given the rationale in its decision letter. Therefore its decision is flawed.
122. In its decision letter the Council said Ms D's son could walk to school accompanied as necessary. He is 13, has special educational needs and is disabled.
123. The statutory guidance says when a child attends a school within the statutory walking distance councils must:
- consider if the child is eligible for free school transport because the route is unsafe, because of problems with their mobility or because of associated health and safety issues related to their special educational needs or disability.
 - if so, councils must consider if the child could reasonably be expected to walk if accompanied.
 - if so, councils must go on to 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.
124. We asked the Council at what age it would normally expect a child to walk to school unaccompanied. It says it is up to their parents not the Council. The Guidance says councils must decide if it is reasonable to expect a child to be accompanied. The Council should therefore have a view on what is reasonable.
125. The statutory guidance requires councils to make decisions about accompaniment on a case by case basis. However as there are no suitable records of its decision, we do not know what factors the Council took into account when it decided Ms D's son could walk to school if accompanied and it was reasonable to expect her to accompany him. In its decision letter the Council said he would only be safe if accompanied by an adult. The information from his Statement, the Consultant and the Headteacher all raised questions about his safety even if he were accompanied by an adult. The Council's lack of record keeping means it cannot explain how it addressed those concerns when deciding Ms D's son would be safe if accompanied by an adult and it was reasonable to expect her to accompany him. The Council's failure to show how it came to its decision on accompaniment and what factors it took into account was fault.
126. The Council refused to consider the higher rate mobility DLA Ms D's son received. That was fault. The Consultant Paediatrician and his Headteacher both said he could not walk independently to school and it was not safe for him to do so. The Council should be able

to demonstrate how it came to the decision Ms D's son did not have mobility issues. The Council's decision that it was reasonable to expect the parent of a 13 year old to accompany him on his walk to school was flawed as it has no evidence of the range of factors it took into account before coming to that decision. The failure by the Council to demonstrate that it had considered relevant information during the appeal was fault. This fault brings into question the merits of the Council's decision that her son had no mobility issues. We cannot know whether the decision itself was incorrect, only that there is no evidence it was taken correctly, balancing all the evidence and reaching a reasoned view.

127. Ms D's son was caused distress and disruption to his education. Ms D resorted to asking for help in transporting her son to school and has at times had to pay for a taxi. Her son continues to refuse to walk to school.
128. The Council should pay Ms D £500 for the distress and disruption caused to her and her son. This would acknowledge the costs she incurred when she had a legitimate expectation her son would receive school transport support for the remainder of the school year.

Decision

129. There was fault by the Council causing an injustice to Mr & Mrs A, Ms B, Mrs C, Ms D. Other families were affected by the same fault.

Recommendations

130. To remedy the injustice caused to Mr & Mrs A, Ms B, Ms C, Ms D and others affected by these faults, the Council should within three months of our final decision:
 - apologise to all four families for the identified faults. The Council has agreed to our recommendation.
 - pay Mr & Mrs A £300, Ms B £100, Mrs C £600 and Ms D £500 for the uncertainty, distress and disruption caused. This would also acknowledge the additional costs the families incurred when they had a legitimate expectation their child would receive school transport for the remainder of the school year. The Council has agreed to our recommendation.
 - make new school transport decisions for families A, B, and D. It should properly explain how it came to those decisions, what information it took into account including what factors it considered when it decided it was reasonable to expect the parent to accompany the child and why it disputes any supporting evidence the parents supplied. (The Council recently told Mrs C it will provide her son with specialist transport for the 2016 school year.) If the Council was again to refuse to provide school transport, or the parent disagrees with the arrangements, this would entitle all of these families to new appeals which should be held under improved administrative procedures and held by officers who have not previously considered these appeals. The Council has agreed to our recommendation.

- review the decisions it made on the additional nine appeals it identified during the investigation, which it refused. This is because of the faults we have identified. It should provide evidence to us of how it has reconsidered each case and how it has taken into account the information the appellants provided in their case and whether its decisions are sound. The Council has agreed to our recommendation. The Council says two of the children are now in mainstream school and not eligible for specialist transport and two have moved to new special schools and are now eligible for specialist transport. It says it will send application forms to the remaining families and, if submitted, the Council will reconsider them.
- review its school transport application form for children with special educational needs and/or a disability to include an element to show if a family is on low income defined as receiving the maximum Working Tax Credit or free school meals. The Council agreed to this recommendation and has already implemented the changes.
- review its school transport appeal procedure. It should ensure it shows how it has taken into account individual circumstances and the supporting evidence supplied and explain the rationale for its decisions. It should take notes of the Appeal Panel's deliberations and decision making to ensure its decisions can be audited. It should 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 Council says it will meet this recommendation by taking more extensive notes of appeals and provide more comprehensive feedback to individuals in its decision letter. It will also state all the documents the Council has considered such as the Statement and Education, Health and Care Plan.