

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

**Investigation into a complaint against  
Wolverhampton City Council  
(reference number: 17 018 207)**

**1 November 2019**

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## The Ombudsman's role

For more than 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

Ms X	The complainant
J	Foster child one placed with Ms X
K	Foster child two placed with Ms X
L	Foster child three placed with Ms X

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## Report summary

### Education – Children’s services: Fostering

Ms X complains the Council failed to provide her with appropriate financial support to take three Looked After Children to school when she was a foster carer.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

To remedy the injustice to Ms X the Council has agreed to:

- apologise to Ms X for the fault we have identified;
- reimburse Ms X the travel allowance for the period she transported J and L to and from their schools at the Council’s general mileage rate and not the rate of 20p a mile: and
- consider whether to exercise discretion to consider granting transport given K’s circumstances to see if the child falls under its exceptional circumstances criteria. If so, the Council should consider whether to reimburse Ms X any additional costs of transporting J and K to their school.

The Council has also suggested it pays Ms X an additional £500 for her time, trouble and inconvenience. We welcome this suggestion.

To remedy the injustice to others we recommend the Council:

- reviews its Fostering Service Terms and Conditions, school transport policy and its procedures to ensure Looked After Children who are ‘eligible’ children receive the free home to school transport they are entitled to;
- writes to all its foster carers inviting them to complain to the Council if they believe they were wrongly denied free home to school transport for their foster children who were ‘eligible’ from August 2017. This being the date of our issued report [16 006 379](#) which put councils on notice of this issue and gave time to review their policies if not compliant with the law. The Council should consider each case on its merits, explain its decision to the foster carer in writing and signpost those carers who remain dissatisfied to us; and
- ensures foster carers receive clear information about allowances and expenses payable and how to access them before the child is placed to enable them to make informed decisions.

The Council 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*)

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## The complaint

1. Ms X, a former foster carer for the Council, complains the Council failed to provide her with appropriate financial support to take three Looked After Children to school.
2. Ms X says Council officers previously told her to take petrol money from the children's allowances. Ms X says it left her with less to spend on the children and she needed to use her personal savings. Ms X considers both she and the children suffered because of this.

## The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)

## Summary of relevant guidance

### Legal responsibility for Looked After Children

5. A council generally has parental responsibility for Looked After Children in its care. This includes a child for whom the court has awarded it a full care order under section 31 of the Children Act 1989. It means the council makes all significant decisions about the child including decisions about where s/he goes to school.

### Home to school travel arrangements

6. Under the Education Act 1996 (the Act) local authorities must make 'suitable travel arrangements', 'as they consider necessary', for 'eligible children' to attend their 'qualifying school'. This transport must be provided 'free of charge' (section 508B).
7. 'Eligible children' are defined in Schedule 35B of the 1996 Act. They include:
  - children living outside 'statutory walking distance' from the school (two miles for children under eight, three miles for children between eight and 16); and
  - children for whom the local council has not made suitable arrangements for the child to become a registered pupil at a qualifying school.
8. The relevant 'qualifying school' is the nearest school with places available that provides 'education appropriate to the age, ability and aptitude of the child, and any special educational needs the child may have'.
9. The Government's Home to School Travel and Transport guidance 2014 says that to comply with their home to school transport duties local authorities must "make transport arrangements for all eligible children (Part 1.2)".

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### **The Council's Home to School Travel Policy**

10. The Council determines whether it is required to provide transport to help a pupil to attend a designated school according to its Home to School Travel Policy. In Part B 'Eligibility for other reasons' it says:
- Exceptional circumstances – *"In cases of pupils whose education may be severely disrupted, for example because of the effect of being taken into the care of the Local Authority, or if their home life has been very severely disrupted or if the non-provision of transport will place the continuity of education in jeopardy. The LA will consider each case individually, taking into account the special circumstances involved. Decisions of this nature will be recorded and countersigned by a senior officer."*

### **The Council's Fostering Service Terms and Conditions 2017**

11. Of relevance to this case, the Council's Fostering Services terms and conditions setting out fees and allowances for Foster/Family and Friends carers states:
- "Children's Fostering Allowances*
- *These payments are designed to cover the full cost of caring for the foster child. They incorporate all costs for: Food; Clothing; Personal and household expenditure; Outings; Dental and optical needs; Activities including clubs and hobbies; school activities - including trips, holidays and associated equipment; Holidays; Savings; Birthdays; Religious festival; Travel expenses.*
  - *Transportation*
    - 15.1.1.1 *Foster carers shall facilitate contact arrangements for children by taking them to a designated Contact Venue.*
    - 15.1.1.2 *Foster Carers are expected to transport children to and from school.*
    - 15.1.1.3 *No extra payments are made to foster carers for transporting children and young people in their care."*
12. The Council's Individual Placement Agreement with foster carers says it expects foster carers to arrange and fund day to day transport needs including school up to a maximum of 200 miles a week. It says any additional mileage would need to be pre-arranged and agreed with the Council. If agreed the foster carer can submit a claim for the additional miles. The Council pays a claim at a rate of 20p a mile.

### **Our previous reports**

13. We issued a [previous report](#) on this issue in August 2017. The council involved refused to provide free school transport to foster carers to take the child they fostered to school. The child attended a school over the statutory walking distance and the council decided the child should remain at this school during the foster placement. This was considered to be in the child's best interest. We found fault causing an injustice as the council wrongly insisted the foster carers must use the child's fostering allowance to provide transport to school when they were eligible for free school transport. This was against the requirements set out in the Education Act 1996. We found other foster carers in the council's area may also have been affected by this fault.
14. We publicised the report and also wrote to the Association of Directors of Children's Services in October 2017 to highlight the issue. This was because several councils appeared to be acting in error over foster carers caring for

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children who are eligible for free school transport. We advised that councils should amend their policies to comply with the law.

15. We also issued a [report](#) in 2018 on a case involving foster carers and a council's failure to pay them the transport costs for an eligible child. The report further confirmed our position that foster carers looking after an eligible child should not have to use the fostering allowance to pay for transporting the child to school.

### **How we considered this complaint**

16. We spoke to Ms X and considered the information she provided in her complaint. We asked the Council to comment on the complaint and produced this report after considering all the information provided and the law and guidance referred to above.
17. We gave Ms X and the Council a confidential draft of this report and invited their comments. We took all comments received into account before the report was finalised.
18. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (OFSTED), we will share our final report with OFSTED.

### **What we found**

19. Ms X became a foster carer for the Council in 2016. Foster carers receive a fostering allowance to pay for the needs of the child and a fostering fee to recognise their professional skills.
20. The Council placed two children, J and K, with Ms X in April 2016 until January 2017. J was seven years old when the placement started and K, nine years old. The children attended a school 2.8 miles away from Ms X's home.
21. Ms X drove a round trip of 5.6 miles twice a day to get the children to school. This totalled 11.2 miles a day. The children attended school five days a week, so Ms X drove 56 miles a week transporting J and K to school.
22. The Council placed L with Ms X in February 2017. The placement ended in April 2018. L was five years old when the placement started and attended a school 4.6 miles away from Ms X's home.
23. Ms X drove L a round trip of 9.2 miles twice a day to get to school totalling 18.4 miles a day. The child attended school five days a week, so Ms X drove 92 miles a week transporting L to school.
24. Ms X contacted the Council in January 2018 after seeing publicity about our report from August 2017 and submitted a mileage claim. Ms X said the Council had not allowed her to move the children to schools nearer to her home. So, Ms X considered she was entitled to a mileage allowance for taking the children to their schools as they were over the statutory walking distance of two miles for children aged five to eight years old.
25. The Council responded it paid carers a fee and an allowance for each child. The allowance incorporated an allocated mileage of 200 miles a week for school transport costs and any other necessary mileage. Foster carers could then claim for any mileage they exceeded over 200 miles travel a week. The Council says it makes its policy clear to foster carers when approved as a foster carer and during supervision meetings with social workers. The Council considered Ms X was

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aware of the expectation on foster carers to transport children to school and other activities where appropriate. It says Ms X was aware her fostering fee allowance included any mileage costs under 200 miles a week.

26. The Council refused Ms X's mileage claim saying she was within the 200 miles a week allowance. It considered the children placed in Ms X's care were not eligible for free school transport as they did not meet the Council's free school transport criteria. The Council says the children were in mainstream school education and if considered eligible then it would have provided school transport. The Council considered it had correctly administered its school transport and mileage allowance for the children placed with Ms X.

#### **The Council's response to the complaint**

27. The Council confirms the children placed with Ms X were Looked After Children as they were in the care of the Council. It says the distances to the schools attended by the children varied but all exceeded the statutory two-mile walking distance.
28. The Council confirms the children did not attend the nearest schools to Ms X's home. This was because the Council respected the children's rights to attend their existing school wherever possible for reasons of learning continuity. The Council says its fostering allowances support this principle and it will not agree a change of school unless the child was in a long-term placement. The Council says it will not agree a change of school to bring a school placement within statutory walking distance.
29. The Council initially disagreed the children placed with Ms X qualify as eligible for free school transport due to attending a school over two miles away. It did not consider the Looked After Children status of foster children makes them eligible for free school transport unless it is specifically agreed in an Education, Health and Care Plan. Transport would then be granted in recognition of any special needs they may have and their need to attend a special school. It has now revised its position and accepts it was wrong to say the children were not eligible for free transport.

#### **Conclusions**

30. The Council's position was foster carers must pay for all transport, including home to school transport, out of the fostering allowance received for each child. If the mileage goes over 200 miles a week the foster carer can submit a claim for additional mileage.
31. J was less than eight years old when placed with Ms X and attended a school more than two miles from Ms X's home. The Council kept J at the school he attended before moving to live with Ms X for reasons of continuity of learning. In this case we acknowledge the Council clearly acted in the best interest of the child when maintaining his school placement. But it meant J lived beyond the statutory walking distance to his school. The Council did not make any arrangements for J to become a registered pupil at a nearer school. So, J was an 'eligible' child under Schedule 35B of the Act.
32. The situation was the same for L. The child was under eight years old when coming to live with Ms X and the Council did not make arrangements for L to attend a nearer school. So, L was also an 'eligible' child under Schedule 35B of the Act.

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33. K was over eight when coming to live with Ms X so did not qualify as the statutory walking distance for children over eight is three miles. K attended a school 2.8 miles away. But the Council's Home to School Travel Policy allows the Council to exercise discretion for children over eight years old to consider granting transport due to the child's circumstances. The Council has not provided any evidence to show whether it has considered exercising discretion in K's case.
  34. The Council should consider exercising its discretion to consider granting transport given K's circumstances to see if the child falls under its exceptional circumstances criteria. We are pleased the Council has now agreed to do this.
  35. As 'eligible' children, J and L were entitled to receive home to school transport under section 508B of the Act "free of charge". The Council has failed to provide the school transport free of charge. This is because it has insisted Ms X use money from the children's fostering allowances, which it paid at the same rate as other carers who did not care for 'eligible' children.
  36. When the Council placed J, K and L with Ms X it decided the children should stay at their current schools. The schools were all over two miles away therefore due to their ages J and L were entitled to free transport.
  37. The Council required Ms X to meet the costs of taking J and L to school from the children's fostering allowances. This is a payment the foster carer receives to meet the needs of the child they care for. The Council does not pay more for children who are 'eligible' for free school transport. So, after Ms X met the cost of J and L's school transport from their fostering allowances, they had less money than other foster children who go to school closer to their foster home. The Council has not provided the transport 'free of charge' as required by the Act. This was fault by the Council.
  38. The Council should review its school transport arrangements for Looked After Children and fostering allowances to ensure 'eligible' children receive free school transport.
  39. Section 508B(4)(b) of the Act says councils can only pay parents to provide transport for 'eligible' children if the parents agree to receive a payment rather than the transport. The Council must therefore ensure that foster carers agree to receive a payment for transporting 'eligible' children in their care to school rather than the transport. Foster carers caring for an 'eligible' child should receive a transport payment calculated in the same way as any other parent of an 'eligible' child.
  40. The Council must not treat foster carers and their foster children differently from other parents. 'Eligible' foster children must not receive less fostering allowance than other foster children who attend schools closer to their foster home.
  41. The Council initially said it, and many other councils operate this system of using the fostering allowance for school transport for Looked After Children. It says its policy reflects its interpretation of the advice available about fostering allowances and what they should be used for. It considers the advice says for most children the school transport costs would be included in the fostering allowances paid for by councils for caring for foster children.
  42. When we set out our initial findings and recommendations on the complaint to the Council it said it would take at least four months before it could confirm it accepted them. It has also stated our findings and recommendations will have significant implications for other councils. We did not feel the position the Council had taken was acceptable and therefore decided to issue a public report on the

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case. The Council has subsequently confirmed it now accepts our findings and will comply with our recommendations, which we welcome. But we remain of the view a public report should be issued to ensure any other council operating similar policies will be put on further notice of the need to amend and revise unlawful practices.

43. The Council should have been aware of our view on free school transport for children in foster care since August 2017. Its failure to take action to ensure provision of school transport for eligible children placed in foster placements in its area is fault. This has caused an injustice to Ms X and other foster carers who may have been and continue to be likewise affected. It is not acceptable that it has failed to take the necessary action to ensure its transport policy is legally compliant. We are pleased it has now accepted fault and has made commitments to comply with the recommendations we have made to remedy the injustice caused to Ms X and other foster carers who may have been similarly affected.

## Summary

44. The Council's refusal to fund Ms X's school transport costs for J and L was fault. It did not comply with the law and statutory guidance. The Council failed to interpret the law correctly and it has caused an injustice to Ms X, J and L. This is because its failure to provide them with free school transport has caused them a financial disadvantage. Other foster carers working for the Council may also be affected by this fault.

## Recommendations

45. To remedy the injustice to Ms X the Council has agreed to;
- apologise to Ms X for the fault we have identified;
  - reimburse Ms X the travel allowance for the period she transported J and L to and from their schools at the Council's general mileage rate and not the rate of 20p a mile; and
  - consider whether to exercise discretion to consider granting transport given K's circumstances to see if the child falls under its exceptional circumstances criteria. If so, the Council should consider whether to reimburse Ms X any additional costs of transporting J and K to their school.

The Council has also suggested it pays Ms X an additional £500 for her time, trouble and inconvenience. We welcome this suggestion.

46. To remedy the injustice to others we recommend the Council:
- reviews its Fostering Service Terms and Conditions, school transport policy and its procedures to ensure Looked After Children who are 'eligible' children receive the free home to school transport they are entitled to;
  - writes to all its foster carers inviting them to complain to the Council if they believe they were wrongly denied free home to school transport for their foster children who were eligible from August 2017. This being the date of our issued report 16 006 379 which put councils on notice of this issue and gave time to review their policies if not compliant with the law. The Council should consider each case on its merits, explain its decision to the foster carer in writing and signpost those carers who remain dissatisfied to us; and

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- ensures foster carers receive clear information about allowances and expenses payable and how to access them before the child is placed to enable them to make informed decisions.
47. 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*)

EMBARGOED TILL 00:01, 17/01/20