

Report

on an investigation into
complaint nos 11 014 974, 11 015 557,
11 016 039, 11 018 204, 11 018 986,
11 019 625 and 11 021 873 against
Leicestershire County Council

25 September 2012

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Table of Contents	Page
Report summary	1
Introduction	3
Legal and administrative background	3
Investigation	4
Key facts	4
Conclusions	7
Finding	9
Recommended remedy	9

The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

The complainants

Miss A
Ms B
Mrs C
Mr D
Miss E
Mr F
Mrs G

The schools

School 1
School 2

Report summary

Subject

The Council initially confirmed to Miss A, Ms B, Mrs C, Mr D, Miss E, Mr F and Mrs G in May 2011 their children would be entitled to free home-to-school transport. The decision was reversed in October 2011 when the Council wrote to confirm it would be withdrawn as their home addresses were within three miles of either School 1 or School 2.

All complainants except Mrs G appealed disputing the safety of the route, in particular the lack of street lighting, but not the distance. Mr F also questioned the lack of consultation as the Council had traditionally provided transport to families in the area.

The Council carried out route assessments for School 1 and School 2, but did not consider most of the factors as set out within the Department for Education and Skills (DfES) transport guidance – Home to School Transport Guidance. This was maladministration and was compounded by the Council's failure to consider the complainants' representations.

All complainants were caused the unnecessary time and trouble of bringing a complaint to me and subject to avoidable uncertainty about whether the Council would provide free home-to-school transport because of a flawed decision-making process and subsequent review.

The Council has amended its Home to School Transport Policy following a formal review of its walking route assessment process and carried out a reassessment of the route for School 1 and the route for School 2 used by Miss E and Mrs G. The reassessments conform to the amended walking route assessment process and are compliant with the DfES Home to School Transport Guidance. However, the Council has yet to complete the assessment for the School 2 route used by Mr F. The Council has not written to Miss A, Ms B, Mrs C, Mr D, Miss E, Mrs G and others similarly affected to confirm the outcome of the reassessments and advise of the right to review and challenge its decision.

Finding

Maladministration causing injustice.

Recommended remedy

The Council to carry out the following:

- review and amend its Home to School Transport Policy to ensure it is compliant with the DfES guidance;
- reassess each of the routes under its amended policy and DfES guidance;

- inform all complainants and those similarly affected of the outcome and advise of their right of review; and
- review and amend existing review process to ensure all representations are considered.

Introduction

1. Miss A, Ms B, Mrs C, Mr D, Miss E, Mr F and Mrs G all complain the Council either wrongly withdrew or failed to provide free home-to-school transport for their children, in that it did not consider the safety of each route before making its decision.
2. Mr F also makes the following additional complaints:
 - the Council created a reasonably held expectation it would provide free home-to-school transport from September 2011 and beyond;
 - the Council failed to consult on a change to established practice and did not consider making changes in a phased manner; and
 - the Council did not have a sufficiently robust procedure for reviewing decisions about home-to-school transport.

Legal and administrative background

3. The Ombudsman's role is to consider complaints of service failure and administrative fault causing injustice. The Ombudsman must consider whether a council has acted reasonably in accordance with the law, its own policies and accepted standards of local administration.
4. While the Ombudsman can consider the administrative actions of a council the law does not allow me to challenge properly made decisions even though people may disagree with them. Nor can I challenge the professional judgement of a council's officers. Where a council has acted with maladministration, the Ombudsman considers whether injustice has arisen, and any suitable remedy for that injustice.
5. According to the Education Act 1996 a council must provide free home-to-school transport for a pupil up to statutory school leaving age who lives beyond the statutory walking distance of the school. Statutory walking distance is defined as being up to three miles for pupils aged eight to sixteen. Special rules apply to children from low income families. This is measured by the nearest available route along which a child, accompanied as necessary, can walk with reasonable safety. The route may include footpaths and other pathways.
6. The Department for Education and Skills (DfES) document entitled Home to School Travel and Transport Guidance (2007) places a series of obligations on councils. The DfES guidance (paragraph 84) suggests that in conducting route assessments the following factors should be considered:
 - "the age of the child;

- whether any potential risks might be mitigated if the child were accompanied by an adult;
- the width of any roads travelled along and the existence of pavements;
- the volume of traffic travelling along any roads;
- the existence or otherwise of any street lighting; and
- the condition of the route at different times of the year, at the times of day that a child would be expected to travel to and from school.”

Investigation

Key facts

7. The children of Miss A, Ms B, Mrs C and Mr D all attend School 1 and had previously been in receipt of free home-to-school transport. In the cases of Miss E and Mr F the Council offered places in Year 7 at School 2 for their children as part of the normal admissions round on 1 March 2011. The Council then determined eligibility for free home-to-school transport. Mrs G’s son had already been attending School 2 and receiving free home-to-school transport. According to Mrs G this was because the Council previously judged the route as unsafe.
8. In May 2011 the Council confirmed to Miss E and Mr F their children were entitled to free home-to-school transport as their home addresses were more than three miles from School 2. The Council then issued bus passes for September 2011.
9. The Council wrote to Miss A, Ms B, Mrs C, Mr D, Miss E, and Mr F in mid-October 2011 to confirm that, following a reassessment, it was withdrawing free home-to-school transport. The letter explained that this was because their home addresses were now within three miles of either School 1 or School 2 and there was an available walking route. At the same time the Council advised that the decision would take effect from the start of the Spring Term in January 2012 in line with its Home to School Transport Policy. When the Council wrote to Mrs G it confirmed it would withdraw school transport as there was now an available walking route.
10. When the Council withdrew free home-to-school transport for School 2 it lifted a long-standing discretionary exemption for home addresses within Mr F’s local area. This exemption had been in place for decades and was, effectively, custom and practice. It would have been reasonable to expect the Council to have consulted with the affected parties prior to making its decision, but there is no evidence such consultation took place. The DfES guidance suggests councils should consult widely for a period of at least 28 days during term time.

11. Between October and December 2011 the Council received appeals from Miss A, Ms B, Mrs C, and Mr D about School 1, all of which disputed the safety of the route but not the actual distance. There were a number of concerns raised, but three were common to each of the appeals:
 - the route involved walking along a pavement next to a dual carriageway where heavy traffic passed by pedestrians at speed;
 - the children would have to walk in the dark during the winter months as it took more than an hour to walk to School 1;
 - there was a lack of street lighting along part of the route, with some of the lights switched off.
12. Between late-October and early November 2011 Miss E and Mr F lodged appeals with the Council. Both disputed the safety of the route, but not the distance. Mr F also questioned the lack of consultation given the Council had traditionally provided transport to families within the local area.
13. Mrs G referred the matter to her local Member of Parliament (MP) before making a formal complaint to the Council on 11 January 2012. The complaint questioned the safety of the route and the removal of historical exceptions. The Council responded on 13 February 2012, but did not uphold any aspect of the complaint. Miss A, Ms B, Mrs C and Mr D raised concerns with their local MPs about the Council's decision. Mr F also referred the matter to his MP, Parish Council and other agencies as well as the Headteacher at School 2.
14. In response to each of the appeals the Council did not refer to the specific concerns raised, but merely stated the home addresses were less than three miles from either School 1 or School 2 and the routes had been assessed as safe. The Council did not acknowledge Mrs C's appeal when it was made in December 2011 and did not provide a substantive response to Mr D until he queried the decision letter in February 2012.
15. For School 1 the Council initially carried out a desk-based assessment of the route followed by an on-site assessment on 28 July 2011. The Council concluded the route was available. According to Google Maps parts of the route for School 1 had narrow pavements with little or no grass verge between the pavement and the road.
16. However, the assessment was limited in that it made no reference to the availability of street lighting, the width of the pavement or the speed and volume of traffic. The Council officer who carried out the assessment noted that while the route was currently available it should be checked regularly over the coming months to ensure it remained so. No further checks were carried out before the Council wrote to Miss A, Ms B, Mrs C and Mr D in mid-October 2011 to confirm it was withdrawing free home-to-school transport.

17. Following several unsuccessful appeals some parents of children attending School 1 approached their Parish Council and commissioned their own risk assessment of the route. The assessment, carried out by a health and safety consultant in January 2012, identified a series of safety concerns regarding the route. A copy was made available to the Council, who subsequently disputed the observations, qualifications and experience of the author.
18. For School 2 the Council confirmed an assessment of the route had been carried out in June 2010 and initially concluded the route was unsafe as the assessment of the route identified overgrown foliage that had the effect of restricting visibility and/or use of the footpath. The Council provided photographs of parts of the route, which identified places where the footpath had foliage on one side, which had previously been overgrown. The route assessment considered personal injury accident data and noted there was a continuous footway for the whole of the route. There were no additional concerns raised other than those identified as part of the assessment of the walking route.
19. In October 2011 the Council carried out a further route assessment, based on the concerns raised in June 2010. The assessment concluded the route was available as there were no longer concerns about the overgrown foliage, but made no comment on any other part of the route. At the same time the Council told Mr F that one walking route (also referred to as the 'alternative route') was available and that his son should use this. The Council's assessment report included a photographic record of the route.
20. In December 2011 School 2 made a discretionary decision to pay Mr F's transport costs until July 2012. School 2 took the view that it was inappropriate for the Council to withdraw free home-to-school transport, as a result of continuing safety concerns.
21. In response to formal enquiries the Council confirmed the route assessments for both School 1 and School 2 did not take into account the availability of street lighting. According to the Council this was not a requirement of its Home to School Transport Policy. While it is not my role to challenge the merits of individual decisions, particularly the Council's assessment of either route, it is possible to take a view on how it carried out the assessments and whether this was in accordance with published guidance.
22. The Council carried out the reassessment for School 1 on 23 May 2012 and decided the route was available. The Council reassessed the route used by as Miss E and Mrs G for School 2 on 31 May 2012 and 11 June 2012 and decided the route was available. The reassessment for the route used by Mr F for School 2 remains outstanding.
23. According to Mrs G's MP the Council confirmed to her it had written to those families who had appealed and would have a child at either School 1 or School 2 in September 2012 of the outcome of the review. However, it is unclear whether

this has happened because Ms B, Mrs C and Mr D have confirmed that they were not contacted by the Council. Instead the Council published the reassessments on its website on 5 July 2012.

Conclusions

24. The key point is how the Council established the safety of both routes. I have not challenged the accuracy of the route measurement as Miss A, Ms B, Mrs C, Mr D, Miss E and Mr F only challenged the safety of the route, including when the Council carried out the assessments.
25. I am concerned about how the Council carried out both route assessments. For School 1, the Council carried out the route assessment in July 2011, which was initially desk-based. The Council officer who carried out the assessment recorded the route was currently available, but suggested carrying out further checks over the coming months to identify any additional growth over sections of the pavement. However, no subsequent checks were undertaken.
26. Had the Council carried out a reassessment of the route for School 1 it would have been in a position to take a view on the availability of the route at different times of the year. As a result the Council would have been able to take account of the difference in making the journey to school during the summer and winter months and the impact of less available daylight, both in the mornings and evenings. At the same time the Council would have been able to note the impact of the decision to permanently switch off some of the street lighting along the route. However, the fact remains that the route assessment for School 1 did not consider the existence or otherwise of street lighting.
27. When the Council completed the route assessment for School 2 in June 2010 it found there was no safe route available. Unlike School 1 the Council reassessed the route in October 2011, but only considered those concerns raised during the previous assessment in June 2010 and not the additional issues of street lighting and the condition of the route at the different times of year – including the impact of less available daylight.
28. The route assessments only considered the width of the roads, crossing points and existence of pavements. It is also unclear the time at which the Council conducted any of the assessments, but I would have expected it to have done so at the times when children would be travelling to and from school. While I recognise the Council reassessed the route it still did not consider most of the factors as set out within paragraph 84 of the DfES guidance entitled – Home to School Travel and Transport Guidance as detailed in paragraph 6 of this report. This was maladministration.
29. Further, the Council failed to consider the representations made by Miss A, Ms B, Mrs C and Mr D about the lack of street lighting and the impact on the safety of the route when asked to review its initial decision. As a result I believe the

Council's decisions were the result of a fundamentally flawed decision-making process and this was further maladministration.

30. The Council did not immediately remove any entitlement as it notified parents for School 1 and School 2 they would be expected to pay or make alternative arrangements from January 2012. This decision reflected the Council's Home to Transport Policy. When the Council made the decision in October 2011 it failed to explain to parents why it had been made. The Council merely stated there was a safe route available and the distance to School 1 was less than three miles. In my view the Council should have clearly explained the reasons for these decisions and its failure to do so was maladministration.
31. Mr F believed there was an expectation that once the Council had confirmed his son's eligibility for free home-to-school transport this would apply throughout the 2011/12 year and beyond. I do not agree there was any such expectation as the Council was within its rights to review and amend any previous school transport decision. The key point here is how the Council carried out the change and whether, in this instance, it carried out an effective route assessment for School 2 before removing the discretionary exemption.
32. Therefore, because of the maladministration identified in paragraphs 28 and 29, Miss A, Ms B, Mrs C, Mr D, Miss E, Mr F and Mrs G were subject to the following injustice:
 - caused unnecessary time and trouble of bringing a complaint to me;
 - denied their right to challenge the Council's decision via the correct application of the review process;
 - lost opportunity for Miss E, Mr F and Mrs G to comment on the Council's decision to withdraw free home-to-school transport for School 2 due to the lack of consultation; and
 - subject to avoidable uncertainty as to whether the Council would provide free home-to-school transport because of a flawed decision-making process and subsequent review.
33. The Council carried out the reassessments for School 1 and School 2 – the route used by Miss E and Mrs G – in line with its amended walking route assessment process. However, it failed to advise Miss A, Ms B, Mrs C, Mr D, Miss E, Mrs G and others similarly affected of the outcome and the right of review. This is maladministration and continued injustice for Miss A, Ms B, Mrs C, Mr D, Miss E and Mrs G.

Finding

34. For the reasons set out above I find that there has been maladministration causing injustice.

Recommended remedy

35. The Council agreed to carry out the following actions:

- undertake a formal review of its walking route assessment process to ensure that the process properly takes into account, and demonstrates that it takes into account, the DfES guidance;
- amend its Home to School Transport Policy to incorporate the reviewed walking route assessment process;
- undertake a reassessment of the walking route in this case addressing its mind to all of the factors identified in the DfES guidance and that assessment be undertaken in a conscientious way by an officer who has had no dealings in this case and who will consider the issue afresh;
- apologise formally to Miss A, Ms B, Mrs C, Mr D, Miss E, Mr F and Mrs G for the inconvenience caused to them and for failings in the way in which the Council has administered the assessment process in this case;
- make payments to Miss A, Ms B, Mrs C, Mr D, Miss E, Mr F and Mrs G to reflect the time and trouble in bringing their complaints;
- provide free home-to-school transport for the children of Miss A, Ms B, Mrs C, Mr D, Miss E, Mr F and Mrs G if the route assessment determines the routes for School 1 and 2 as unavailable; and
- reimburse Miss A, Ms B, Mrs C, Mr D, Miss E, Mr F and Mrs G for all reasonable costs incurred from January 2011 if the route assessment determines the routes for School 1 and 2 as unavailable.

36. The Council has confirmed it has carried out the following actions:

- undertaken a formal review of its walking route assessment process to ensure that the process properly takes into account, and demonstrates that it takes into account, the DfES guidance;
- amended its Home to School Transport Policy to incorporate the reviewed walking route assessment process; and
- undertaken a reassessment of the walking route in the cases of School 1 and School 2 in relation to the route used by Miss E and Mrs G based on all of the factors identified in the DfES guidance by an officer who had no dealings in this case.

37. The Council has yet to carry out the following actions:
- apologise formally to Miss A, Ms B, Mrs C, Mr D, Miss E, Mr F and Mrs G for the inconvenience caused to them and for failings in the way in which the Council has administered the assessment process in this case;
 - pay £100 each to Miss A, Ms B, Mrs C, Mr D, Miss E, Mr F and Mrs G to reflect the time and trouble in bringing their complaints to me;
 - write to Miss A, Ms B, Mrs C, Mr D, Miss E, Mrs G and other parents similarly affected to confirm the outcome of the reassessments and advise of their right of review;
 - undertake a reassessment of the walking route in the case of School 2 in relation to the route used by Mr F based on all of the factors identified in the DfES guidance by an officer who had no dealings in this case;
 - if the reassessment determines the route for School 2 as available reimburse Mr F for all reasonable costs incurred from January 2012; and
 - review and amend the existing review process to ensure it is fit for purpose.
38. The Council should ensure it completes all the outstanding actions in paragraph 37 by the end of the autumn half-term. Evidence of all actions should be provided to this office by 12 November 2012.

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25 September 2012