

Scottish Parliament Region: Central Scotland

Case 200701326: South Lanarkshire Council

Summary of Investigation

Category

Local government: Education

Overview

The complainant (Mr C) raised concerns on behalf of one of his constituents (Mrs A) about issues relating to a mistake made by the Council in allocating a place for her eldest child at a primary school which was outwith the catchment area.

Specific complaint and conclusion

The complaint which has been investigated is that the Council unfairly withdrew Mrs A's son's right to free transport on his transfer to secondary school (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) formally apologise to Mrs A for the errors which have occurred in this case; and
- (ii) put in place arrangements to provide Mrs A's son with free transport to and from school, during his secondary education, for such time as he remains at his current school.

The Council have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. The complaint is made by an MSP (Mr C) on behalf of a constituent (Mrs A) who approached him in May 2006 about her concerns that South Lanarkshire Council (the Council) were penalising her eldest child because of an error they made in 1999, when she was given incorrect advice about the catchment area of the primary school which her son should attend.

2. Throughout his attendance at primary school, Mrs A's son was provided with free transport to and from school because his home was more than one mile from the school and the Council's current policy was that free school transport was provided to all primary school pupils who live more than one mile from the local school and secondary school pupils who live more than two miles from the school. Mrs A was not made aware by the Council of the error in placing her son (in that he was not attending his local school) until his final year at primary school.

3. During the process for transfer arrangements to secondary school, Mrs A was wrongly notified by the Council that her son would not automatically transfer to the feeder high school for his primary school because his attendance at his current school was through a placing request. However, she was informed she could make a request for him to attend (the feeder) school or he could take up the place allocated at the high school which was in his catchment area. The implications of attendance at the feeder high school were that he would not be entitled to free transport and would have to apply for a place on the bus (a privilege place). Mrs A wished her son to attend the feeder high school but needed a place on the bus to be guaranteed (walking distance from his home to this school is 2.90 miles). She appealed directly and through Mr C to the Council to reconsider their decision not to provide a guaranteed place for her son but was unsuccessful. Since his transfer to high school two years ago, the Council have provided a privilege transport place. However, this was on the basis that she must re-apply each year, with no guarantee that a privilege place will be available. The complaint has been submitted by Mr C, on the grounds that the Council have failed to address properly the consequences of their original error in placing Mrs A's son at the wrong primary school to his detriment and should have guaranteed him a place on the school bus until the end of his secondary education.

4. The complaint from Mr C which I have investigated is that the Council unfairly withdrew Mrs A's son's right to free transport on his transfer to secondary school.

Investigation

5. I obtained the Council's comments on the complaint and identified relevant legislation. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C, Mrs A and the Council were given an opportunity to comment on a draft of this report.

Legislation

6. Section 51 of the Education (Scotland) Act 1980, as amended, makes provision for education authorities to provide free school transport to pupils aged eight years and under who live more than two miles from the local primary school and pupils aged eight years and over who live more than three miles from the local secondary school. Section 28A of the Education (Scotland) Act 1980 entitles a parent of a qualifying child to make a 'placing request' for their child to attend a specific school under the control of the education authority and it is a duty of the education authority to determine whether such a request is viable.

Complaint: The Council unfairly withdrew Mrs A's son's right to free transport on his transfer to secondary school

7. The complaint has its roots in the advice Mrs A was given before her son started primary school in August 1999. In his statement of complaint, Mr C noted that Mrs A had expected her son to attend the local primary school, which was just round the corner from his home, but she was told by the Council that the school in which her son had been placed was over a mile away but that this accorded with the catchment area. If she wished him to go to another school, she would have to make a placing request. However, in doing so, she should be aware that if this was unsuccessful the Council would have the right to place her son at any Council primary school. As Mrs A was anxious to ensure that her son was given a place in the school allocated by the Council, she accepted the offer and, as the school was over a mile from his home, the Council provided Mrs A's son with free daily transport to and from primary school.

8. Mr C claimed that Mrs A did not receive advice that the Council had made a mistake in her son's primary school placement until the final year of his primary schooling, although this had been known by the Council for some time.

9. Mr C stated that the first intimation to Mrs A that her son would not automatically transfer to the feeder school for his primary school was in January 2006, some way into the transition process, when the Head Teacher of her son's primary school telephoned her with advice that her son had been placed in the wrong primary school by the education authority and, as a result, he would be transferring to a different secondary school. The Head Teacher wrote on the same day to Mrs A's husband but made no reference to the Council's error. The letter advised that his son was a pupil who had options to transfer to one of two secondary schools and that arrangements had been made for him to transfer (to an alternative secondary school from the one he had been due to attend). It referred to his son's placement at the primary school as a result of a placing request and that, because of this, there was an opportunity to opt for a place at the other school in the area. Alternatively, he was entitled under the terms of Section 28A of the Education (Scotland) Act 1980 to make a placing request to another school. However, it was pointed out that children who attend school on a placing request are not entitled to free school transport.

10. Mr C commented that, when Mrs A contacted the Council subsequently, they confirmed that they had made the original error over her son's primary school placement and it was not as a result of a placing request. The Council agreed that Mrs A's son could attend the feeder school. However, they informed her that they were not prepared to make free transport available to him. A meeting was set up, attended by the Head of Education (Resources) (the Officer) and the Head Teacher of her son's primary school. Mrs A asked for reconsideration of the decision on transport on the grounds that the situation arose because of Council error - not as a result of her making a placement request - and the change would be very upsetting for her son, who had been due to attend the same school as all his friends. Mrs A's notes of the meeting record that she was told that, if she went for the school of her choice, school transport would not be provided and there was no guarantee of a 'privilege place', that is, one of the spare capacity places on the school contract vehicle. Her notes show that the Officer admitted that the Council had known about the error 'some time ago' but decided not to tell the family about it. However, in a statement which I have obtained from the Officer (who confirmed her attendance at the meeting), she stated that the options which would be available for Mrs A's son were discussed but she had no recollection of saying that the Council knew of the problem for some time.

11. In May 2006, Mr C took up the case with the Council, asking for the matter to be reinvestigated. The Head of Service (Quality) responded to Mr C in June 2006, confirming that Mrs A's son was enrolled at a primary school which was not the catchment school. In the circumstances, the Council had decided to provide Mrs A's son with free school transport 'for the duration of his primary education'. Mrs A had been provided with three options for her son's secondary schooling but free school transport would only be provided if he went to his catchment school for the area. As Mrs A had decided to enrol her son at a secondary school outwith the catchment area, he did not qualify for free school transport. However, it was suggested that she could apply for a privilege place for her son, although it was not guaranteed that this would be granted. Mr C responded to the Council asking them to reconsider their decision and accede to Mrs A's request for free school transport for her son, on the grounds that the problem over schooling had arisen because the Council did not tell Mrs A timeously when they discovered their error. Mr C suggested to the Council that, if they had informed Mrs A at the time, she and her husband would have known the options and been able to make an informed decision on their son's future schooling, taking account of the transport implications.

12. In his response to Mr C in July 2006, the Head of Service (Quality) explained that the enrolment error had come to light 'when the preparation for transition from primary to secondary education began'. He explained that, under Council policy, Mrs A and her son were allowed to choose the catchment school or associated secondary school without a placing request (as set out in the Head Teacher's letter of 9 January 2008, paragraph 9). However, the policy did not extend to the provision of free school transport. In recognition of the disappointments and concerns expressed by Mrs A, her son had been granted a privilege transport place but only for the current year (August 2006 to 2007) and she would have to re-apply each successive year. On the advice of Mr C, Mrs A accepted the free transport offer, with the intention of reverting to the Council at a later date with a request for a guaranteed place on the school bus for her son for his remaining years at secondary education.

13. The following year (30 March 2007) Mr C wrote to the Executive Director Designate of the Council's Education Resources, reiterating his previous view on the provision of free transport for Mrs A's son and asking the Council to reconsider their decision that Mrs A had to re-apply annually for a privilege place on the school bus for her son. On 23 April 2007, the Executive Director

Designate responded by confirming that the arrangement would finish at the end of the current school session (and Mrs A should reapply for a privilege place for next session). Mr C made further representations, seeking the Council's agreement to award Mrs A's son a permanent place on the school bus. The Officer responded on 31 May 2007 that:

'When [Mrs A's son] was enrolled in error at [the] Primary School, the Council's policy is to honour any transport associated with that error, during the time [he] was a pupil at [the] Primary School ... As Mrs A chose [to transfer by association of the primary school he attended] her son is not entitled to free school transport as he does not reside within the catchment area.'

14. When he submitted the complaint to this office, Mr C commented that there was considerable evidence that the Council knew of the mistake long before January 2006 but had refused to acknowledge this in correspondence on the matter. He supported Mrs A in her belief that, as the Council had made the initial error, they should have accepted the full consequences of that error and granted Mrs A's request for a permanent place on the school bus for her son during his secondary education.

15. I asked the Council to comment on the complaint, in particular to provide advice of how and when the placement error was discovered and, if there was delay in notifying the school and the complainant, to explain the reasons for the decision and whether the implications for Mrs A's son's transfer to secondary school were taken into account. I asked them also to comment on the claim by Mr C that two Council officers had purportedly stated that the Council was aware of the problem for some time before notifying Mrs A.

16. In reply to my formal enquiries about the complaint, the Council informed me that the error in Mrs A's son's enrolment was discovered in late December 2005, during the routine transfer process which is carried out every year, when parents are informed to which secondary school their child will transfer in August of that year and that this was the first time this particular enrolment error had been discovered or discussed. The Council have confirmed that the Head Teacher spoke to Mrs A on 10 January 2006 and notified her about the error; however, they have not provided me with proof of how the discovery was made. In response to my request for copies of relevant letters or emails, I have been informed that the communication between the Council and the Head Teacher of the primary school was carried out only

through telephone conversations. No notes of telephone calls have been produced.

17. I was informed that it was Council policy, where there was spare capacity on a dedicated school contract vehicle, to offer such places to applicants within the catchment area who are not eligible for school transport. Privilege places were allocated after the start of the new school year when the total number of eligible children had been confirmed. It was necessary to re-apply for privilege places each year as numbers can fluctuate from one school session to another and it was sometimes necessary to hold a ballot. The Council's leaflet on their school transport policy explains that privilege transport would only be granted providing there was a spare place on an existing school contract and could be withdrawn at short notice, should an entitled pupil require a place on the school bus during the school session.

18. The Council commented also that it was their policy, where a child has been enrolled in error at a school, that transport to that school would be provided while the child remains in the school. However, when I asked for a copy of this policy, I was informed that this is custom and practice and not formal Council policy.

Conclusion

19. Because of the unavailability of proof, it has not been possible to establish with certainty how and when the Council's error in placing Mrs A's son came to light. Nevertheless, I uphold the complaint because I am satisfied the evidence that is available shows that there were failings in the way the Council handled the matter.

20. I can fully appreciate that it must have been with disappointment and a sense of dismay that Mrs A received the news about the change in secondary school for her son when he was in the transitional process. Despite the Head Teacher's telephone call informing Mrs A of the Council's error, his letter to Mrs A's husband made no reference to this and was written as if Mrs A's son's attendance at his primary school was as a result of a placing request. No formal apology was offered to Mrs A and the Council only acknowledged that it was their error, which resulted in her son being at the wrong school, when she wrote asking them to reconsider their decision about providing free transport. In support of this request, both Mr C and Mrs A referred to their understanding from her discussions with Council officers that the Council had known about the

error for some time and had failed to inform Mrs A and her son timeously, yet the Council did not deal with this issue in their responses. The case for Mr C is strengthened with the production by Mrs A of notes of her meeting with the Council and the Head Teacher. The Council have been unable to provide documentary evidence in support of their contention that the error first came to light late in December 2005 and, when pressed as part of this investigation, have only been able to provide an officer's recollection of a meeting with Mrs A.

21. In considering what action it would be appropriate for the Council to take to remedy the complaint, I have taken into account that the Council have corrected previous advice given, about it being a matter of policy that the provision of free transport was only while the child remained in the school to which they had been enrolled in error. Nevertheless, in all the circumstances, and given the errors which have occurred, I consider that the Council should acquiesce to Mrs A's request to provide her son with free transport while he remains at his current secondary school.

Recommendations

22. The Ombudsman recommends that the Council should:

- (i) formally apologise to Mrs A for the errors which have occurred in this case; and
- (ii) put in place arrangements to provide Mrs A's son with free transport to and from school, during his secondary education, for such time as he remains at his current school.

23. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

Explanation of abbreviations used

Mr C	The complainant, and MSP
Mrs A	The aggrieved and Mr C's constituent
The Council	South Lanarkshire Council
The Officer	Head of Education (Resources)

List of legislation and policies considered

Education (Scotland) Act 1980