

11 November 2022

Complaint reference:
21 004 069

Complaint against:
Nottinghamshire County Council

The Ombudsman's final decision

Summary: Mrs M complains about the payments she received to transport her daughter, G, to school. The Council has agreed an additional payment so Mrs M receives the equivalent of its new and improved 'disabled travel assistance payment' from its introduction.

The complaint

1. Mrs M complains about the payments she received to provide school transport for her daughter. In particular, Mrs M complains:
 - a) the 'parental mileage allowance' she received has not increased since 2012; and
 - b) she was not told she could claim a 'direct travel assistance payment' introduced in 2017 which she believes is considerably higher.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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*)
3. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
4. Once we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. I have considered:
 - information provided by Mrs M; and
 - information provided by the Council.
6. I invited Mrs M and the Council to comment on my draft decision.

What I found

7. Mrs M's daughter, G, is disabled. Mrs M has transported G to school since 2006. Initially, she received payments for two return journeys a day at the 'parental mileage allowance rate'. The Council reduced the rate from 45p per mile to 22.6p per mile on 1 January 2012.
8. The Council introduced the 'direct travel assistance payment', known as DTAP, for children with special educational needs in 2017. DTAP is a form of personal budget. It is one of a number of transport options for disabled children.
9. DTAP is paid termly in advance. The payments are based on two return journeys a day at 45p per mile and can be spent on travel related expenses. Parents sign a contract with the Council governing the use of the payment. Their spending is audited, and the Council reclaims unused funds.
10. The Council invited Mrs M to apply for the 'direct travel assistance payment' in November 2019 and agreed a payment in June 2020.

Mrs M's complaint

11. Mrs M complained to the Ombudsman in June 2021. She believes the Council should have increased the 'parental mileage allowance rate' each year.
12. Mrs M referred to the Council's 2010 transport policy which says that "if bus fares increase or decrease, the grant (allowance) will be amended and parents will be notified at the earliest opportunity."
13. Mrs M says bus fares have increased every year since 2012, but the parental mileage allowance has remained the same.
14. She calculated the amount she believes she is owed, based on an annual increase of 4% in the 'parental mileage allowance rate', to be £3,900.
15. Alternatively, Mrs M thinks the Council should pay the 'direct travel assistance payment' rate since its introduction in 2017. In this case, she calculated she is owed £2,968.
16. We asked the Council to respond to Mrs M's complaint. The Council said it was satisfied it had made the correct payments. The Council did not comment on Mrs M's view the 'parental mileage allowance rate' should have increased.
17. Dissatisfied with the Council's response, Mrs M asked the Ombudsman to consider her complaint.

Consideration

18. Mrs M has kept detailed records of her dealings with the Council over the years. I am grateful for the information she provided.
19. The law says a complaint must be made within 12 months, although we have the power to disapply this requirement.
20. I have decided to investigate Mrs M's complaint about the payments she received from date DTAP was introduced in 2017. This marked a significant change in the Council's school transport allowances which Mrs M complains parents were not told about at the time. Mrs M complained once she became aware of the change, so her complaint is not late and it is possible for me to investigate her concerns.
21. I will not consider Mrs M's complaint the Council did not increase the 'parental mileage allowance' between 2010 and 2017 because this complaint is too old. Mrs M could have complained sooner.

The direct travel assistance payment

22. Mrs M believes she would have been paid considerably more if she had received the direct travel assistance payment (DTAP) since its introduction in 2017 rather than the parental mileage allowance. She complains she was not invited to apply for DTAP until November 2019. Mrs M has received the DTAP since June 2020.

Does DTAP pay more than the 'parental mileage allowance'?

23. The parental mileage allowance Mrs M received until June 2020 and the direct travel assistance payment she has been paid since then are not directly comparable.
24. The parental mileage allowance has no conditions attached. It is based purely on a child's attendance at school. The direct travel assistance payment, in contrast, is a contract between a parent and the Council. Its use is subject to conditions, claims are audited and unused funds reclaimed. A pupil in receipt of DTAP can use different forms of transport whereas parental mileage allowance is only paid when a parent uses their own car.
25. However, either payment could be claimed by a parent to provide transport in their own car.
26. I explored the way DTAP worked to see whether Mrs M would have received the same amount, after audit, if she had claimed DTAP rather than 'parental mileage allowance'. On the evidence seen, it appeared likely she would have received almost twice as much.
27. It appears that a parent claiming DTAP could receive almost twice as much as a parent claiming 'parental mileage allowance' for exactly the same transport. This makes the payments appear arbitrary and has scope to cause confusion.

How was DTAP publicised?

28. Mrs M complains she knew nothing about DTAP until she was invited to apply in November 2019 by a transport officer who suggested she would be better off claiming the new allowance.
29. The Council explained that it does not routinely review travel arrangements for children with special educational needs. It says the introduction of DTAP was widely publicised and Mrs M could have applied sooner if she had wanted the payment.
30. The Council says it published information on its website and in documentation and leaflets about the transfer of statements of special educational need to education, health and care plans that was taking place at the time.
31. Mrs M disputes the Council's claim the introduction of DTAP was widely publicised. She says she held a role in the Nottinghamshire Parent Carer Forum at the time and has no recollection. She says she has searched her archive of *IRIS* magazines and can find no reference. The Iris Project produces a quarterly magazine with information about special educational needs and disabilities on behalf of Nottinghamshire County Council and Nottingham City Council.

Conclusions: should Mrs M have received DTAP sooner?

32. The introduction of DTAP was a positive step by the Council. It gave eligible children and young people with disabilities and their carers choice, freedom and flexibility in their school travel arrangements.

-
33. However, its introduction created an anomaly because the Council's existing school transport offer, the 'parental mileage allowance', appears considerably less generous.
34. Either payment could be used by a parent to provide transport in their own car. Offering two different mileage rates for essentially the same transport appears arbitrary.
35. Since the Council introduced an improved offer for parents of disabled children with the DTAP, it was fault not to ensure all eligible parents were aware of the offer from its introduction. Simply advertising the offer and expecting parents to realise they would be better off and apply was unreliable, as Mrs M's complaint demonstrates.
36. I conclude, based on the information I have seen, the Council should have offered Mrs M DTAP when it was introduced in 2017. If it had, I conclude on balance she would have accepted and would have been paid considerably more.

Agreed action

37. We have published guidance to explain how we calculate remedies for people who have suffered injustice as a result of fault by a council. Our primary aim is to put people back in the position they would have been in if the fault by the Council had not occurred.
38. The fault by the Council was the introduction of DTAP, an improved transport offer for disabled children, without taking adequate steps to ensure all those who were eligible, and would be better off, transferred from previous transport allowances.
39. The injustice suffered by these parents was that they missed out on the improved transport offer the Council intended for disabled children. Mrs M cannot now retrospectively benefit from the flexibility offered by DTAP.
40. Nevertheless, I have calculated payments she would have received if she had received DTAP from its introduction (rather than the 'parental mileage allowance'). The Council has agreed to pay Mrs M the balance.
41. The Council has agreed to pay Mrs M £2,942.05.

Final decision

42. I have completed my investigation. The Council has agreed an additional payment so Mrs M receives the equivalent of its new and improved 'disabled travel assistance payment' from its introduction.

Investigator's decision on behalf of the Ombudsman