

Children and Young People Overview and Scrutiny Committee

BRIEFING NOTE – No. 05/19

Date: August 2019

Briefing paper to: All Members of the Children and Young People Overview and Scrutiny Committee

Purpose: To provide an overview of the specific point of disagreement between the LGO and Medway Council in relation to home to school transport

COUNCIL RESPONSE TO LGO COMPLAINT RE MAINSTREAM HOME TO SCHOOL TRANSPORT DECISION AND POLICY

Officer Contact Details:

David Watkins Head of Education, Gun Wharf
01634 331282
david.watkins@medway.gov.uk

Simon Harrington-Whitnall School Admissions and Transport Manager,
Gun Wharf
01634 334014
s.harringtonwhitnall@medway.gov.uk

Further to the Children and Young People Overview and Scrutiny Committee meeting of 25 July 2019, please find below the detail of the specific point of disagreement between Medway Council and the Local Government Ombudsman in relation to home to school transport.

The basic issue is a disagreement over whether the order of preference of schools when a family applies for a school place should be taken into account when said family is then assessed for free home to school transport.

In the case that gave rise to the complaint, the family had placed their highest preference as their second nearest qualifying school. The family were offered a place at the highest preference, i.e. their second nearest qualifying school and were therefore not eligible for free home to school transport because the child is not attending the nearest qualifying school. At the time of application, the information available to the family demonstrated that they had every opportunity of gaining a place at the nearest qualifying school. However, on national offer day, the school was oversubscribed and the family would not have been

successful in gaining a place at their nearest qualifying school because they would not have been ranked high enough against the oversubscription criteria. Had they placed the school as their first preference, they would have been eligible for free home to school travel assistance to the second nearest qualifying school, because the nearest qualifying school could have been considered and discounted. However, because they did not rank the nearest qualifying school as their highest preference they did not qualify.

It should also be noted that all families have the opportunity to check their nearest qualifying school(s) to inform their preferences choices and how it may impact on their eligibility for home to school travel assistance, but this family did not use this opportunity.

The LGO's position is that the preference order is not relevant to the assessment of transport eligibility and that assessments should be based on whether the child had a realistic expectation of being offered a place at a nearer school, whether they had applied for it or not.

They advise that the school being attended should be eligible for transport even if there are closer schools if the child would not have been offered a place at a closer school (even if the closer school is named as a lower preference than the school being attended and there had been no opportunity to refuse a place).

Therefore, because the family would not have been successful in gaining a place at the nearest qualifying school, the LGO consider it appropriate that the Council disregard this school, regardless of the fact that the authority were never in the position to consider the child for a place at the school because they placed a school further away as the higher preference and a place at that school could be and was offered on national offer day.

The Council Policy states:

When the school being attended is not the nearest qualifying school, education travel assistance can only be considered if:

- a) The nearest qualifying school has been applied for as a highest named preference but not offered*
- b) The nearest qualifying school has been applied for as a higher named preference than the school being attended*
- c) Schools have been applied for in qualifying distance order (i.e. the nearest qualifying school has been applied for as the first/highest preference, the next nearest qualifying school as the second preference, and so on. This principle and minimum eligible distances apply for all preferences*

If the nearest qualifying school has not been applied for or has been

applied for as a lower preference than the school attended, the pupil will not be eligible for home to school transport even if over the minimum eligible distance.

Please note:

Under the provisions of the School Admissions Code 2014, the LA has a duty to try and offer a place at the highest possible preference where there is a place available. The admissions decisions are based on the oversubscription criteria for each school (not the preference), but the LA uses the order of parental preference to determine which school is to be offered where a child can secure a place at more than one of their preferences. The statutory duty of the LA is to offer the highest preference that can offer a place.

Medway Council has sought external Counsel legal advice twice, which supports the view that the Medway Council Education Travel Assistance Policy is lawful. An opinion was also sought from the Department for Education, who advise on the Council's Policy that they '*believe it is common practice for local authorities to have such policies and would agree that, in general, it is an effective and acceptable way of ascertaining whether a child is eligible for free home to school transport*'.