

Scottish Parliament Region: South of Scotland

Case 200602279: North Ayrshire Council

Summary of Investigation

Category

Local government: Education; school transport

Overview

The complainants (Mr and Mrs C) are the visually impaired parents of two children, the younger of whom (Child A) is visually impaired. North Ayrshire Council (the Council) arranged transport to and from nursery school for Child A, with another child and a Council-employed escort. However, Mrs C considered that, as Child A's mother, she should have been able to act as the escort. She raised concerns about lack of comparability with her elder daughter's treatment, her younger daughter's right to be taken to nursery by her mother and denial of her own rights as a mother to take her daughter to school herself.

Specific complaint and conclusion

The complaint which has been investigated is that the Council's transport arrangements should have included Mrs C as the escort (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. The complaint from Mr and Mrs C which I have investigated is that North Ayrshire Council (the Council)'s transport arrangements should have included Mrs C as the escort.

Investigation

2. In investigating the complaint, I reviewed correspondence between Mr and Mrs C and the Council, and the Council's replies to my enquiries, including their transport policy for pre-school children and their disability equality scheme. A reminder of the abbreviations used is at Annex 1.

3. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C and the Council were given an opportunity to comment on a draft of this report.

Complaint: The Council's transport arrangements should have included Mrs C as the escort

4. Mr and Mrs C have a profound visual impairment. They have two daughters, the younger of whom (Child A) has a significant visual impairment and had been offered a place to start at a nursery school (the Nursery) in September 2006. The elder (Child B) has no visual impairment. When she was younger, Child B attended the Nursery, and the Council provided transport for her, with Mrs C acting as the escort. However, when Child A was to start at the Nursery, the Council said that there was another child, who also needed transport and an escort, and that they would provide transport for the two children together, with an escort supplied by themselves.

5. That decision prompted Mr and Mrs C's complaint as they wanted Mrs C to be the escort for their younger daughter. In other words, they wanted the Council to provide four daily taxi journeys – one to take her and her daughter to the Nursery in the mornings, one to bring her home alone, one to take her back to the Nursery in the afternoons and one to bring them both home. Mr and Mrs C considered that, although Child A was the one with the disability, she had been treated less well than her non-disabled sister by not being able to travel to and from the Nursery with her mother. They also said that Child A had the right to be accompanied by her mother and that it was emotionally and socially upsetting to a three-year-old not to be accompanied by a parent, particularly

one who, like Child A, had had a number of hospital admissions throughout her life and had ongoing health difficulties. And they said that Mrs C herself had rights as a mother to take her own daughter to school and to be involved with the Nursery and the community. Acting on Mr and Mrs C's behalf, the Royal National Institute of the Blind Scotland (RNIB Scotland) added that, if Mrs C could not take her daughter to and from nursery school, she would be unable to develop the constructive links with teachers and other parents that she had successfully made in relation to her elder daughter.

6. I summarise here other points made by Mr and Mrs C and RNIB Scotland. The Scottish Government want disabled children to be integrated and for the disabled parents' active involvement in bringing up their children and in taking part in school life to be encouraged. The Disability Discrimination Act has two main requirements: that those with a disability should not be treated less favourably than others and that reasonable adjustments must be made to facilitate this. It is well known [to RNIB Scotland] that children with a visual impairment face serious difficulties in integrating socially into mainstream nursery and primary school life. Legislation has placed specific additional duties on education authorities to manage the crucial transition phases, such as entry into nursery, more positively. It would appear that Child A is being treated less favourably than her sister, for whom reasonable adjustments were made, based on their mother's visual impairment. The Council considered Child A to have additional needs. It is her inclusion in a register of children with additional needs which has prompted her particular transport arrangement. In other words, her disability has resulted in her being treated less favourably than her elder sister. In allowing Mrs C to act as escort with Child B, the Council set a precedent, and, therefore, Child A should be treated the same.

7. As Mr and Mrs C did not feel able to accept the Council's arrangements, they arranged a place at a private nursery school close to their home, for which transport was not an issue, hoping that this would be a temporary measure until the Council changed their decision. The Council transferred funding there for Child A's placement so that she could attend but told me in February 2007 that they could still make available a place at the Nursery.

8. During September and October 2006 there was much correspondence between Mr and Mrs C and the Council. In this paragraph I summarise, in chronological order, the Council's main points.

- We would be happy for Mrs C to travel with Child A for the morning run

from 4 September 2006 [the start of the Nursery place] until the October holiday. Hopefully, Mr and Mrs C will feel better by then about the travel arrangements, but we would be happy to review the situation at that time.

- [Following Mr and Mrs C's rejection of the above offer and in response to further questions from them]

The provision made for Mr and Mrs C's elder daughter was in consideration of the position of the parents, whose visual impairment would have made it difficult to accompany her to school. We were able to agree to Mrs C's escorting Child B because no other available transport was in place at the time. The provision of transport for children who, like Child A, have additional support needs is based on their need to get to and from school. Escorts are provided where this is deemed necessary for the safety and well-being of the child. No provision is made for parents of children with additional support needs to travel with their child. We already have a contract in place for an escort to travel with another child, and there is available space for Child A to join this arrangement. Far from discriminating against Child A because of her disability, we are providing a service because of the additional support she needs.

- [In answer to further questions from Mr and Mrs C]

To optimise the conditions for Child A's learning, we made adaptations to the Nursery beyond what was legally required. Where we use escorts for a child's travel to and from school, we ask the escort to meet the parents so the escort can be clear about any particular needs and can reassure the parents that the best service possible will be provided to the child. Escorts always hand small children over to a member of staff at the school. Strict protocols are in place, signed by parent and school, where the child needs to be given medicine at school; escorts are never responsible for passing on messages in relation to this. We do not accept that Child A is being discriminated against because of her disability. We do not provide transport to nurseries except for children who live over five miles away or have a disability. Nor do we accept that we are discriminating against Mr and Mrs C as disabled parents. We have 27 children, aged three and under, with additional support needs, who are transported with escorts to their nursery school or centre, and none of these are accompanied by their parents. In other words, Mr and Mrs C have been treated no less favourably. We appreciate their anxieties, given Child A's age and health concerns. However, we believe that the suggestion that Mrs C accompany her daughter until October is a reasonable one.

- Child A's needs were assessed because of her visual impairment, and it was considered that she needed transport to access her nursery place. In this respect, any barrier or difficulty to accessing learning would be considered an additional support need.
- [Letter from the Chief Executive]
All the relevant correspondence has been reviewed and Educational Services staff have provided information. Having carefully considered all the issues, I have concluded that Educational Services' position has been fair and reasonable. I have seen no reason to overturn the decision to deny Mr and Mrs C's request for Mrs C to act as escort. The proposed arrangements are consistent with the Council's nursery transport policy. And I confirm that, as with any Council decision, we made this decision with due regard to the available resources; indeed, not to have done so would have been irresponsible. Although the proposed arrangements do not meet Mr and Mrs C's wishes, I am satisfied that they meet Child A's needs.

9. In answer to enquiries from me, the Council provided further information, particularly in relation to their responsibilities and policies, and I summarise here their key points.

- In the context of this case, our responsibilities are solely to Child A. Our transport responsibilities for her are to provide home/school transport in line with Council policy. Apart from our general responsibility to ensure accessibility of services and public buildings to people with a disability, the Council have no direct responsibility to Mrs C in relation to this case.
- In exceptional circumstances, transport may be provided to support families. This was done in Child B's case. When she was to start at the Nursery, it was agreed that we would provide taxi transport as her parents would find it difficult to take her. No contract was in existence so a new one had to be set up specifically, and we were able to include Mrs C as an escort as part of the contract terms. This was set up as an exceptional arrangement, not a precedent. It was intended as a helpful response, in the circumstances at that time.
- Unlike Child B, Child A has additional support needs. These were considered by a team which included representatives from the Council's Education and Psychological Services departments and from the local NHS Health Board. The team's purpose is to ensure good planning to meet children's needs.
- Arrangements were then put in place for Child A to attend the Nursery.

After visits to the Nursery by the Visual Impairment Home Link Worker, Mrs C and Child A, and after involvement of our Pupil Support Service and the Health Board, adaptations and staff training were arranged in relation to the Nursery. The adaptations included lowering the kerbs at the zebra crossing, line painting in the play ground, marking stair edges and moving certain cupboards. Other adaptations and provision of equipment were to be arranged if required.

- We adopted the disability equality scheme in November 2006. This sets out how the Council will promote disability equality and the consultation strategies which will be employed. It draws from the requirements of the Disability Discrimination Act 2005 and the Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005. The disability equality scheme was also drawn up in line with the statutory Codes of Practice and other good practice guides produced by the Disability Rights Commission (an independent statutory agency set up by the United Kingdom Government under the Disability Rights Commission Act 1999). In particular, the education scheme, which is conjoined with the main scheme, aims to ensure that barriers which prevent an individual from accessing, or benefiting from, education are removed and that reasonable adjustments are made. We consider that we have fulfilled this aspect of the disability equality duty by providing transport for Child A, arranging training for staff and making adaptations to the Nursery. As Child A is now attending a private nursery, the duty to make reasonable adjustments to that environment lies with the managers of that establishment.
- It was also agreed that Child A needed transport to attend the Nursery. As is normal procedure when a contract to an establishment is already in place, she was given a place on that transport [that is, in the taxi with the other child, for whom an escort had been agreed]. It would not be appropriate, or in line with Council policy, to put on additional transport where something is already in place. Currently, we transport daily to school about 500 children who have additional support-for-learning needs. Arrangements for these children change from time to time to ensure we make the best use of available resources. It would be quite inappropriate for children who could travel together to be transported separately. Therefore, children are grouped where appropriate.

[Complaints Investigator's note: the Council's transport policy for pre-school children states that every effort should be made to include pre-school children who are eligible for Council transport on existing school transport, and also that

an escort should be employed to accompany such children to and from nursery.]

- In summary, an exceptional arrangement was made for Child B, based on the circumstances at that time. It was not a precedent. In relation to Child A, other, suitable, transport exists. We offered to let Mrs C accompany Child A in the mornings for the first six weeks of the placement. We would probably also have provided transport for Mrs C back home from the morning run for that period; however, Mr and Mrs C rejected the offer before such details could be considered. We were also prepared to review the situation at the end of that time, at the October break. The transporting of Mrs C alone on two daily journeys was not a responsibility for the Council. Nevertheless, we offered to see whether the taxi company might be prepared to transport Mrs C on her two daily journeys alone at a reduced price, to be payable by Mr and Mrs C. Mr and Mrs C also rejected that offer. We have made exceptional offers, well beyond what other families would be offered. (The only other exceptional arrangements we make relate to very remote parts of the country.) Mr and Mrs C want additional transport to bring Mrs C home from the morning run and back to school to collect her daughter in the afternoon. Such an arrangement would be completely outside the scope of Council policy.

Conclusion

10. I have thought carefully about the different concerns raised by Mr and Mrs C. I understand Mrs C's wish to take her own child to school and to be able, for example, to meet other parents at the school gates. However, I am wholly satisfied that, in the context of this complaint, the Council had no responsibility to Mrs C. Their responsibilities were to the user of their services, Child A. I am also satisfied that the Council had no responsibility to provide the same for Child A as had been provided for her elder sister – in other words, to have Mrs C as escort. The Council have explained satisfactorily why the arrangement for Child B had been possible, in the circumstances at the time. And I am satisfied that, in treating Child A differently, there was no question of discrimination against Child A. As the Council have said, it would be inappropriate to provide one taxi if another taxi had already been arranged along the same route. And, as the Council's responsibilities were to Child A, not Mrs C, it would be inappropriate for the Council to provide transport for Mrs C on her own to return from the nursery run in the morning and to go back there in the afternoons. It is clear to me that the Council have not acted in breach of their transport or disability policies in relation to Child A.

11. The remaining question was whether the Council should have exercised their discretion to do more, in the particular circumstances of the case. I note that the Council offered Mrs C the chance to accompany Child A during the morning, with the escort, while her daughter became used to the escort and that they were prepared to review the situation at the October holiday, about six weeks later. And I note that they offered to explore the possibility of cheaper transport (to be payable by Mr and Mrs C) for Mrs C's two journeys on her own each day on a longer-term basis.

12. The Council have said that these were exceptional offers, in an attempt to resolve the situation, and that the family are not being denied anything offered to other families. They have explained that it would be inappropriate to set up a duplicate taxi run for Child A and also inappropriate to provide transport for Mrs C's two journeys alone each school day. I am, therefore, satisfied that the Council have exercised their discretion appropriately and that it would not be reasonable to expect them to go further.

13. In summary, therefore, I am satisfied that, in reaching their decision that Mrs C would not be the escort for Child A, the Council took appropriate account of their policies and of their power to exercise discretion and that they reached their decision in an appropriate way. In all the circumstances, I do not uphold the complaint.

19 December 2007

Explanation of abbreviations used

Mr and Mrs C	The complainants
Child A	Mr and Mrs C's younger daughter
Child B	Mr and Mrs C's elder daughter
RNIB Scotland	The Royal National Institute of the Blind Scotland
The Council	North Ayrshire Council
The Nursery	The nursery school where Child A was offered a place