



Author/Lead Officer of Report: Paul Taylor,
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Report of: **Monitoring Officer
Executive Director, Resources**

Report to: **Cabinet**

Date of Decision: **18 December 2019**

Subject: **Report of the Local Government & Social Care
Ombudsman regarding assessment for Blue
Badges**

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
- Expenditure and/or savings over £500,000	<input type="checkbox"/>	
- Affects 2 or more Wards	<input type="checkbox"/>	
Which Cabinet Member Portfolio does this relate to? Finance, Resources and Governance		
Which Scrutiny and Policy Development Committee does this relate to? Overview and Scrutiny Management		
Has an Equality Impact Assessment (EIA) been undertaken?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, what EIA reference number has it been given? <i>(Insert reference number)</i>		
Does the report contain confidential or exempt information?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-		
<p><i>"The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended)."</i></p>		

Purpose of Report:

In line with the requirements of the Local Government & Social Care Ombudsman, the report outlines for Cabinet the Ombudsman's report on a complaint made by Mrs B about the Council's decision not to issue her a blue badge and its failure to offer her a face-to-face mobility assessment. The report also describes the Council's actions in response to the Ombudsman complaint.

Recommendations:

That Cabinet notes the findings of the report, the actions taken by the Council and acknowledged by the Ombudsman, and the additional recommendations of the Ombudsman:

- (a) The Council has taken the following actions. It has:
- arranged an assessment by a physiotherapist for Mrs B; and
 - identified 25 applicants affected by its failure to offer face-to-face assessments and will contact them to offer an assessment by a physiotherapist.
- (b) The Council has also agreed to review the way it deals with applications for blue badges to ensure that, in future, all applicants will be offered an assessment by a physiotherapist in accordance with legislation and statutory guidance.
- (c) In addition, the Ombudsman recommended that the Council:
- apologises to Mrs B for the failure to offer her a face-to-face assessment; and
 - pays her £250 for the time and trouble it has put her to.

Background Papers:

(Insert details of any background papers used in the compilation of the report.)

Appendix A: Report by the Local Government & Social Care Ombudsman

Appendix B: Sheffield City Council Blue Badge Policy (September 2019)

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: Paul Schofield
		Legal: Andrea Simpson
		Equalities: Michelle Hawley
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>		
2	EMT member who approved submission:	<i>Eugene Walker</i>
3	Cabinet Member consulted:	<i>Cllr Terry Fox</i>
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	Lead Officer Name: <i>Paul Taylor</i>	Job Title: <i>Head of Customer Services</i>
	Date: <i>8th November 2019</i>	

1. PROPOSAL

1.1 This report summarises the findings of a formal report by the Local Government & Social Care Ombudsman (attached to this report as Appendix A) regarding a complaint made by Mrs B about the Council's decision not to issue her a blue badge and its failure to offer her a face-to-face mobility assessment. This report also describes the Council's actions in response to the Ombudsman complaint.

1.2 Ombudsman Findings

The Ombudsman found that Sheffield City Council failed to carry out independent face-to face mobility assessments as required by Department for Transport guidance and its own policy, following the complaint from Mrs B. There were 2 further separate complaints made to the Ombudsman about the same issue. Our response to those complaints referred to Mrs B's complaint and the Ombudsman's report into that complaint. The Ombudsman published the report concerning Mrs B's (the first complainant) experience on 24 October 2019.

1.3 Background

The Council started working with NHS Physiotherapists in 2008-09 and set up an agreement where they would carry out assessments (without cost to the Council or applicants) on our behalf in cases where Blue Badge applications were declined and applicants challenged the decision.

In September 2018 Sheffield Hospitals Trust NHS gave notice on that agreement and it came to an end on 31st December 2018.

As a consequence of the withdrawal of Physiotherapy services Customer Services, who administer the Blue Badge scheme for the Council, decided to omit the physiotherapy assessment stage of the procedure. This was an interim measure pending changes to Blue Badge legislation which were due to be made shortly and the revision of guidance issued by the Department for Transport with the intention of making alternative arrangements for assessments that would take into account the requirements of the legislative changes.

In practice this meant that where an applicant required an assessment under the decision making process set out in the Council's Blue Badge Policy, the assessment by a Physiotherapist stage was omitted and instead the decision was made based on declarations from medical professionals, such as a consultant, using the provision for dealing with appeals set out in the policy.

In its response to the Ombudsman the Council accepted that it was not complying with the assessment measures set out in policy, legislation or

the current guidance issued by the Department for Transport, and recognised that this approach may have caused injustice to other blue badge applicants. By the time the response was sent the process of identifying affected individuals had already begun with a view to offering physiotherapist assessments to all those who should have had such an assessment.

1.4 Effect on customers

160 people had applications for blue badges refused during the period where the physiotherapy assessments were not available. Of these most were self-evidently ineligible, under the statutory criteria at the time and in accordance with the Department for Transport guidance, but 25 should have been offered a physiotherapy assessment. Instead of an independent assessment by a Physiotherapist, all of these applicants were offered the chance of seeking a further assessment by their consultant (known as a Consultant's Declaration) or as a last resort by their GP.

Some of the ineligible applicants may now be eligible and have been offered a fresh assessment under the current statutory criteria.

1.5 Remedies

The Recommendations in the Ombudsman's report note that the Council has taken the following actions:

- arranged an assessment by a physiotherapist for Mrs B; and
- identified 25 applicants affected by its failure to offer face-to-face assessments and will contact them to offer an assessment by a physiotherapist.

It is also noted that the Council has agreed to review the way it deals with applications for blue badges to ensure that, in future, all applicants will be offered an assessment by a physiotherapist in accordance with legislation and statutory guidance.

In addition, it is recommended that the Council:

- apologises to Mrs B for the failure to offer her a face-to-face assessment; and
- pays her £250 for the time and trouble it has put her to.

The Council has apologised to Mrs B and paid compensation to her in line with the Ombudsman's direction. Though not recommended in the report, £250 each has also been paid to the other two people who had complained to the Ombudsman.

1.6 Other actions

The Council has now procured and awarded a new contract to provide

Physiotherapy assessments. The customers identified as having been affected will be prioritised for assessment under this contract.

The change to legislation incorporating hidden disabilities into the eligibility criteria for blue badges came into force on 30th August 2019 and updated guidance reflecting this change was published by the Department of Transport. Following these changes the Cabinet Member for Finance Resources and Governance approved an updated Blue Badge Policy on 25th September 2019. The updated policy is attached to this report as Appendix B. The Cabinet Member also approved a consultation exercise with the intention of a more comprehensive policy review taking place.

2. HOW DOES THIS DECISION CONTRIBUTE ?

- 2.1 This report has implications for the “In Touch Organisation” priority in Council’s Corporate Plan. The Council has considered its policy and procedure in light of the complaint and has proactively taken steps to ensure that no other customer is disadvantaged in the same way.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 There is no requirement to consult on the proposal in this report. It has been prepared in response to a public report issued by the Local Government & Social Care Ombudsman on 2 October 2019 following his investigation of a complaint against Sheffield City Council.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

- 4.1.1 As a Public Authority, the Council has legal requirements under Section 149 of the Equality Act 2010. These are often collectively referred to as the ‘general duties to promote equality’ with particular regard to persons sharing the relevant protected characteristics - age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 4.1.2 We have considered our obligations under this duty in this report and in particular those relating to disabled people. The Council is committed to ensuring that all citizens have access to the information and support they need to access services that make a difference to their lives
- 4.1.3 An Equalities Impact Assessment (EIA) was carried out following the recent change to blue badge policy to include some people with hidden disabilities. This EIA will be reviewed when the policy is reviewed as

described in paragraph 1.6 of this report, in accordance with the Cabinet Member decision in September.

4.2 Financial and Commercial Implications

4.2.1 In accordance with Section 30 of the Local Government Act 1974, the Council is required to place a Public Notice in a local newspaper and on a website confirming that a report had been issued by the Local Government & Social Care Ombudsman advising the public where copies of the report were being made available. The cost of the notices is expected to be less than £200 and will be met from existing Customer Services budgets in the 2019/20 financial year.

4.2.2 The financial remedy of £750, being £250 to Mrs B as recommended by the Ombudsman and £250 each to the two other people who were similarly caused injustice and complained to the Ombudsman, has been met from existing Customer Services budgets.

4.3 Legal Implications

4.3.1 Section 92 of the Local Government Act 2000 provides that where a local authority considers that a person has been adversely affected by its maladministration it may make payments or provide other benefits to that person. The Ombudsman's findings and recommendations have been accepted and the Council is therefore able to make the payment to Mrs B recommended by the Ombudsman and a similar payment to the other two complainants. The Director of Legal and Governance under the Council's Constitution is authorised to approve payment in those circumstances.

5. **ALTERNATIVE OPTIONS CONSIDERED**

5.1 The Council could choose to contest the findings of the Ombudsman. However the Council accepts the Ombudsman's view that there has been fault causing injustice to Mrs B.

5.2 The Council could contest the recommendations of the Ombudsman, but as it has acknowledged the failings in this case and taken steps to ensure that no other customer is similarly affected, it believes it should accept the recommendations the Ombudsman has proposed to remedy these failures.

6. **REASONS FOR RECOMMENDATIONS**

6.1 The Council has considered the findings of the Ombudsman in this case and believes that they are accurate. The Council has taken steps to ensure that the issues identified in the report have been addressed for Mrs B and other service users and are not repeated.

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