

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
Sheffield City Council
(reference number: 18 017 471)**

2 October 2019

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mrs B The complainant

Report summary

Adult care services

Mrs B complains about the Council's decision not to issue her a blue badge and its failure to offer her a face-to-face mobility assessment.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

In addition to the requirements set out above, 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.

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.

In addition, we recommend 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 complaint

1. The complainant, whom we shall refer to as Mrs B, complains about the Council's decision not to issue her a blue badge and its failure to offer her a face-to-face mobility assessment.

Legal and administrative background

The Ombudsman's role

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we 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. We 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 may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)

The Blue Badge scheme

4. The Blue Badge scheme is to help disabled people with severe mobility problems access goods and services by allowing them to park near their destination. The scheme provides parking concessions for blue badge holders. Councils are responsible for the day-to-day administration and enforcement of the scheme. This includes assessing whether people are eligible for a badge.
5. In 2014 the Department for Transport (DfT) issued guidance ('the guidance') to councils for providing blue badges to disabled people with severe mobility problems. The guidance is non-statutory which means that councils are not legally obliged to adopt it. In practice, however, most councils do follow it.
6. The guidance says councils must only issue badges to people who satisfy one or more of the criteria set out in legislation. A person is eligible without further assessment if they receive:
 - the higher rate of the mobility component of Disability Living Allowance; or
 - eight points or more under the 'moving around' activity of the mobility component of Personal Independence Payment.
7. A person is eligible subject to further assessment if they:
 - drive a vehicle regularly, have a severe disability in both arms and cannot operate, or have considerable difficulty in operating, all or some types of parking meters; or
 - have a permanent and substantial disability that causes inability to walk or very considerable difficulty in walking.
8. The guidance says that, where an applicant is eligible subject to further assessment, an independent mobility assessor should undertake a face-to-face assessment of their mobility. The person completing the assessment should have a professional qualification giving them expertise in assessing walking ability. Councils typically employ occupational therapists and physiotherapists to undertake the assessments. The assessor must be independent of the applicant and their treatment and care.

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9. The guidance says, “while desk-based assessments have a role as a filtering mechanism to identify applicants who are clearly eligible or clearly ineligible for a badge, they cannot be successfully used as the sole means of determining all applicants’ eligibility for a badge.”
 10. It also states, “it is good practice for local authorities to provide scope for an applicant to be referred for an independent mobility assessment if they are unable to make a clear and robust decision on eligibility using crosschecking or desk-assessment”.
 11. The guidance says applicants who can walk more than 80 metres and do not demonstrate very considerable difficulty in walking through any other factors would not be deemed eligible for a badge.
 12. Having a certain medical condition does not, in itself, qualify an applicant for a badge. Rather, it is the effect of the condition or disability on the applicant’s ability to walk that is assessed.
 13. The guidance sets out several factors that are relevant in deciding whether an applicant meets the criteria for a blue badge. These include: speed of walking; distance walked; excessive pain; and breathlessness.
 14. The guidance recommends a council should have a review mechanism, which preferably does not involve someone directly involved in the original decision. The Council has an appeal process for applicants who are unhappy with its decision.

The Council’s policy

15. The Council’s policy states, “Applicants who have been refused a badge on the basis of the application form alone and who subsequently appeal will be referred to a Physiotherapist for further assessment”.

How we considered this complaint

16. We produced this report after examining relevant documents and considering comments from the complainant and the Council.
17. We gave the complainant and the Council a confidential draft of this report and invited their comments on it. The comments received were taken into account before the report was finalised.

Findings

Key facts

18. Mrs B suffers from arthritis. She cannot walk far and cannot use a walking stick because of pain in her hands. She applied to the Council for a blue badge in October 2018.
19. The Council carried out a desk-based assessment and referred Mrs B’s application for a senior review because she was not automatically entitled to a blue badge without further assessment.
20. A senior customer service adviser contacted Mrs B and asked her additional questions about her condition. Her application was refused and the Council sent a letter informing Mrs B of this.
21. Mrs B telephoned the Council stating she wanted to appeal the decision. The Council sent her a consent form to sign so it could contact her consultant for further information. Mrs B returned the form and the Council wrote to her

consultant asking him to complete a declaration stating whether Mrs B met the blue badge criteria. The consultant returned the form stating she did not meet the criteria “under the terms stated” despite having told Mrs B she should qualify for a blue badge. The Council upheld its original decision and sent a letter to Mrs B confirming this.

Analysis

22. The Council did two desk-based assessments of Mrs B’s application but did not offer her a face-to-face assessment even after she appealed.
23. To comply with the guidance in place at the time and its own policy, the Council should have offered Mrs B a face-to-face assessment with a physiotherapist. Failure to do so was fault. The purpose of a face-to-face assessment is to enable a trained independent assessor to observe the applicant walking and assess their ability to walk.
24. The Council has explained that it entered into an agreement with NHS physiotherapists several years ago whereby they would carry out assessments on its behalf. But the NHS gave notice on that agreement which came to an end on 31 December 2018. The Council was aware the Government was intending to make changes to the eligibility criteria and assessment requirements for blue badges and that the DfT intended to issue new guidance when these changes came into force. So it delayed revising its policy and assessment arrangements until these changes could be included. As an interim measure, where an applicant required an assessment under the process set out in the Council’s policy, the assessment by a physiotherapist stage was skipped and the decision was instead based on declarations by a medical professional, such as a consultant.
25. The Council accepts this did not comply with the guidance or its own policy.
26. The Council recognises it may have caused injustice to other applicants because of its interim approach to blue badge assessments. It accepts most people who were refused a blue badge after October 2018 were not offered an assessment by a physiotherapist in accordance with its policy. It has identified all those affected and will contact them to offer an assessment by a physiotherapist.
27. New Regulations came into force on 30 August 2019 and new guidance has recently been published by the DfT. The Council is reviewing its policy in light of this. The Council’s agreement to offer an assessment by a physiotherapist relates to the Regulations in force at the time of the events in question as an assessment by a physiotherapist will not be appropriate for all applicants under the new Regulations.

Conclusions

28. The Council was at fault because it failed to offer Mrs B a face-to-face mobility assessment.
29. The Council’s fault caused Mrs B a significant injustice because she was denied the opportunity of having her application for a blue badge considered properly. She was also put to time and trouble in pursuing the complaint.

Recommendations

30. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full

Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

31. In addition to the requirements set out above, the Council has taken the following action. It has:
 - arranged an assessment by a physiotherapist for Mrs B; and
 - identified a further 25 applicants who were also affected by its failure to offer face-to-face assessments and will contact them to offer an assessment by a physiotherapist.
32. The Council has also agreed to review the way it deals with applications for blue badges so that, in future, all applicants will be offered an assessment by a physiotherapist in accordance with the legislation and statutory guidance.
33. We welcome the Council's acknowledgement of fault at an early stage of this investigation and the steps it is taking to remedy the injustice caused. In addition, we recommend the Council should:
 - apologise to Mrs B for the failure to offer her a face-to-face assessment; and
 - pay her £250 for her time and trouble.

Decision

34. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mrs B. The Council should take the action identified in paragraphs 32 and 33 to remedy that injustice.

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