

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

**Investigation into a complaint against
Lancashire County Council
(reference number: 17 014 970)**

20 August 2018

The Ombudsman's role

For 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

Mr X	The complainant
The Company	Able 2 Occupational Therapy Services

Report summary

Adult care services

Mr X complains about the Council's decision not to give his son a blue badge.

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 agreed to take these actions based on our recommendations:

- apologise to Mr X for the failure to offer his son a face to face assessment and pay him £250 for the time and trouble it has put him to;
- review the way it deals with applications for blue badges to ensure:
 - it does not discount people with variable conditions;
 - it takes account of people with hidden or non-physical conditions which affect walking ability.

Introduction

1. The complainant, whom we shall refer to as Mr X, complains about the Council's decision not to give his son a blue badge.

Legal and administrative background

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 investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)

How we considered this complaint

4. We have produced this report following the examination of relevant files and documents and discussions with the complainant.
5. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised

Investigation

What happened

6. Mr X's son has Down's syndrome, and a medical condition which causes dizziness and loss of balance. He had a blue badge which expired in September 2017. He had been eligible for the blue badge "*without further assessment*" as he received the higher rate of the mobility component of the Disability Living Allowance (DLA).
7. Mr X's son now receives a Personal Independence Payment (PIP), rather than DLA. He no longer qualifies for a blue badge "*without further assessment*" as he does not have 8 points or more under the moving around activity of the mobility component of PIP to do so. Mr X applied to renew his son's blue badge in October last year. The Council turned him down based on the information provided on the application form.
8. Mr X complained to us in December. He said the Council had turned his son's application down on a technical issue to do with the points system for PIP. He said his son's problems were mental as well as physical. He said non-disabled parking bays were too restrictive as his son needs space to get in and out of the car. He said he needed to be able to drop his son off close to where he is going as he needs to support him all the time.
9. We told Mr X he needed to complain to the Council before we could investigate his complaint.
10. Mr X complained to the Council in January 2018. When the Council replied to Mr X's complaint it referred to the Department for Transport's *Guidance*. It said entitlement to a blue badge depended on the applicant's difficulty in walking. It

said mental/cognitive disabilities did not qualify someone for a blue badge but they could still be eligible if not able to walk or had very considerable difficulty in walking. It said it could not take into account the need for more space to fully open the car doors. However, it said it would offer his son an Independent Mobility Assessment by an Occupational Therapist, initially *“in the form of a paper assessment and in the event that a decision cannot be made a face to face assessment may be required”*. It invited Mr X to contact the Blue Badge Team to arrange an assessment and obtain an application form.

11. On the application form Mr X said his son could walk short distances but could not come down stairs on his feet. He said he used a wheelchair on longer trips and needed full support/supervision to keep him safe. He said his son could walk 100 metres in 30 minutes (including rests and walking for 10 minutes). He added that this could vary from 7 minutes to an hour, depending on his son’s condition. He said his son was short of breath when:

- hurrying or going up a slight hill;
- walking with people of the same age; and
- walking at his own pace on level ground. He said he could be too breathless to leave home or after dressing.

He put the walking difficulties down to a severe mental impairment which means he gets anxious and refuses to walk.

12. The Council uses a Company to do its independent mobility assessments. The Company did a paper assessment on 6 February on a paper screen assessment form for another local authority’s disabled parking scheme. The Company says the terms of that scheme are the same as those for the blue badge scheme.
13. The form does not say how far the son can walk. It says he uses no walking equipment indoors or outdoors but also says he sometimes uses a wheelchair outdoors. It says he can negotiate steps indoors and outdoors with physical assistance and using a handrail. It says he experiences moderate pain when walking. It says he needs to stop when walking but does not identify the *“recovery time”*. It says he does not experience breathlessness but suggests he may need to stop walking due to breathlessness. The Company says it could not use all the information provided on the application form because it says *“varies”* and Mr X did not provide information in the requested format.
14. The assessment says the son was not eligible for a blue badge because:
 - *“Whilst we do appreciate that [Mr X’s son] has difficulties mobilising; however he is independently mobile. Unfortunately cognitive difficulties do not form part of the Department for Transport criteria for Blue Badges and cannot be considered. There is insufficient evidence to support that [his] mobility is significantly impeded to meet the current eligibility criteria for provision of a Blue Badge.”*
15. The Council wrote to Mr X on 9 February. It said the October 2017 application and the follow up independent mobility assessment had both been considered under the *“eligible subject to further assessment”* scheme. It said the information provided on his son’s applications showed he did not meet the eligibility criteria for a blue badge. It repeated what the assessment had said about the son’s eligibility (see paragraph 14 above). It said the decision was final and no further application could be made for three months, unless there was a significant change in the son’s mobility.

16. Mr X complained to us.

17. The Company accepts there are some anomalies between the application and assessment forms which it says it is addressing. However, it says it could not use all the information provided by Mr X's father as he did not fill the form in properly but said his son's condition "varies". The Council says the decision on the son's application was clear so there was no need for the Company to see him face to face. The Council says the Company makes 64% of its decisions on blue badge applications without a face to face assessment.
18. When advised we were considering issuing a public report on this complaint, the Council asked the Company to do a face to face mobility assessment. This resulted in the Company deciding Mr X's son is eligible for a blue badge. The Council says the Company has confirmed it is following the Guidance regarding both physical and non-physical disabilities. The Council has asked the company to do face to face assessments for all applicants with non-physical disabilities, pending receipt of advice from the Department for Transport. The Council says it will also refer applicants for a face to face assessment if they question a negative decision following a desk based assessment.

What should have happened

19. The Department for Transport's *Blue Badge Scheme Local Authority Guidance (England)* is not statutory guidance. Nevertheless, the Council says it is following that Guidance. The Guidance says:
 - "... whilst 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."
 - "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 cross-checking or desk-assessment."
20. The *Guidance* says when considering whether someone has very considerable difficulty in walking several factors may be relevant: excessive pain; breathlessness; distance walked; speed; use of walking aids; outdoor walking ability; and whether walking presents a danger to the applicant's life or would be likely to lead to a serious deterioration in their health.
21. The *Guidance* also says:
 - "Whilst medical conditions such as asthma, Crohn's disease/incontinent conditions, autism, Myalgic Encephalomyelitis (M.E.) and other mental/cognitive/intellectual disabilities are not in themselves a qualification for a badge, people with these conditions may be eligible for a badge if they are unable to walk or have very considerable difficulty in walking. Eligibility is not determined by the presence or absence of any particular diagnosis or condition. Provided that an applicant has a permanent and substantial disability, a local authority's eligibility decision should be based on whether the applicant's difficulty in walking meets the criterion in the regulations."
22. Appendix G of the *Guidance* identifies the "core principles" for independent mobility assessments. They include "observing" the applicant walking.
23. The Department for Transport has carried out a consultation exercise with a view to making changes to clarify its Guidance. The forward to the consultation exercise, which has now ended, said "*The current rules embrace all conditions, physical or otherwise, but it has become clear to us that the regulations and guidance are not clearly understood by local authorities. People with hidden*

disabilities may be finding it difficult to access badges, even though their condition causes them very significant difficulties undertaking a journey.”

Conclusions

24. The Council did two desk based assessments of the son’s application but did not offer him a face to face independent mobility assessment. In relying solely on desk based assessments for 64% of the cases referred to the Company for an independent mobility assessment, the Council was not complying with the *Guidance*. The expectation within the *Guidance* is that independent mobility assessments will be done face to face so walking ability can be observed. It is good practice to offer someone a face to face assessment if they question the outcome of a desk based assessment. That did not happen with Mr X’s son. That was fault by the Council. The Council has now confirmed that people who question the outcome of a desk based assessment will be offered a face to face assessment.
25. The Company’s desk based assessment of the son’s application was flawed. The assessment did not include all the relevant information (e.g. distance walked, speed and recovery time) and some of it was contradictory (e.g. use of equipment outdoors and breathlessness). That was also fault for which the Council is accountable.
26. The *Guidance* does not include advice on assessing variable conditions. However, that does not mean they can be ignored. The right way to assess a variable condition is via a face to face mobility assessment, at which questions can be asked about their frequency and the severity of any impact on walking ability. The Council has confirmed that it is now working to improve the way it deals with people who have variable conditions. It has confirmed that the Company will invite people with variable conditions to a face to face assessment.
27. The Council is right to say that a mental health condition does not qualify someone for a blue badge. But it is at fault for saying walking difficulties arising from cognitive impairments cannot be taken into account. The relevant consideration is walking ability. The Department for Transport has consulted on changes to the *Guidance* which, when implemented, will make it clearer that walking difficulties can arise from hidden disabilities as well as physical disabilities. However, that is simply to clarify what is already the case. The Council has confirmed that it is now referring all applicants with non-physical disabilities for a face to face assessment.

Decision

28. The Council was at fault because it:
 - did not offer Mr X’s son a face to face mobility assessment;
 - said he was not eligible for a blue badge because he has cognitive rather than physical disabilities; and
 - did not properly consider the variable nature of his condition.
29. The Council’s faults caused injustice to Mr X’s son because he has been denied the opportunity of having his application for a blue badge considered properly. It has caused injustice to Mr X because of the time and trouble he has been put to in pursuing the complaint. It needs to take the action identified in paragraph 30 below.

Recommended action

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. When a council commissions another organisation to provide services on its behalf it remains responsible for those services and for the actions of the organisation providing them. So, although we found fault with the actions of the Company, we have made recommendations to the Council.
32. Based on our recommendations, the Council has agreed to:
 - apologise to Mr X for the failure to offer his son a face to face assessment and pay him £250 for the time and trouble it has put him to;
 - review the way it deals with applications for blue badges to ensure:
 - it does not discount people with variable conditions;
 - it takes account of people with hidden or non-physical conditions which affect walking ability.