

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

**Investigation into a complaint against
London Borough of Barking & Dagenham
(reference number: 19 011 326)**

17 July 2020

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

Mr X The complainant

Report summary

Adult care services: transport

Mr X complained the Council failed to properly assess his application for 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*)

To remedy the injustice caused, we recommend the Council:

- apologise to Mr X to recognise the time and trouble he was put to because of this matter;
- assess Mr X's eligibility for a Blue Badge, using both tests set out in the guidance issued by the Department for Transport for issuing Blue Badges. If he does not automatically qualify, it should explain the outcome to him. The Council should make sure the assessment is in line with the guidance;
- review its procedures to make sure it is assessing Blue Badge applicants using both tests for eligibility in line with the guidance;
- carry out training for relevant staff to make sure they are aware of the procedures;
- implement an appeals procedure, in line with the guidance for refused Blue Badge applicants;
- keep its records about unsuccessful Blue Badge applications for at least a year so it can respond to any complaints and these complaints can be reviewed by us;
- amend its information and records policy to show how long it will keep Blue Badge records in future; and
- invite any rejected applicants from the last six months to submit their applications for reconsideration.

The Council has accepted our recommendations.

The complaint

1. Mr X complained the Council wrongly rejected his application for a Blue Badge and failed to review his application when he asked it to.
2. He said the Council's actions caused him stress and upset.

The law relevant to this complaint

3. 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*)
4. 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*)

How we considered this complaint

5. We produced this report after examining relevant documents and speaking to the complainant and relevant employees of the Council.
6. 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.

What we found

The Blue Badge scheme

7. The Department for Transport (DfT) has issued guidance to councils for providing Blue Badges. The Blue Badge scheme entitles drivers or passengers with mobility problems to park nearer to their destination.
8. To qualify for a Blue Badge, an applicant must be assessed by their council as either 'eligible without further assessment' or 'eligible subject to further assessment'.
9. Adults who receive Personal Independence Payments (PIP) and are awarded a certain number of points in the appropriate PIP category, are automatically entitled to a Blue Badge without further assessment.
10. Other people who do not have the necessary points are classed 'eligible subject to further assessment'. This means the council will assess them to decide if they meet the requirements for a Blue Badge.
11. From 30 August 2019, people with hidden disabilities such as anxiety disorders or brain injuries can apply for a Blue Badge.
12. It is up to the relevant council to decide if an applicant meets the eligibility criteria for a Blue Badge.
13. The DfT strongly recommends that councils establish an internal appeals procedure for unsuccessful applicants and clearly signpost this in their decision letters. Councils should also provide unsuccessful applicants with a detailed written explanation.

What happened

14. Mr X applied to the Council for a Blue Badge stating he had hearing loss and posed a risk to himself and others when walking alone. He also submitted documents confirming the PIP points he had been awarded.
15. The Council wrote to Mr X in September 2019 and told him his disability did not reach the required points under his PIP and therefore he was not eligible for a Blue Badge.
16. Mr X asked the Council to review the decision in September 2019. He said the Council should have classed him as 'eligible subject to further assessment'.
17. The Council did not respond, so he chased it two weeks later in early October 2019.
18. The Council responded to Mr X's complaint later that month. It maintained he had not been awarded the required points under the PIP scheme to qualify for a Blue Badge. Mr X disagreed and complained to us.
19. During our investigation, the Council advised us it had deleted all information Mr X had supplied along with his application. The evidence indicates this was the Council's usual practice. The Council accepts it should have retained these documents for a reasonable period and has confirmed it will keep this information in future. However, it has not specified how long it intends to keep this information.
20. In light of the above, the Council has agreed to review a fresh application from Mr X and if it finds he is not eligible, clearly explain why it has done so in writing.

Findings

21. It is not our role to decide whether Mr X should have a Blue Badge; that is the Council's job. Our role is to assess whether the Council made its decision properly.
22. Councils should hold records long enough to allow timely reviews of its decisions. The Council destroyed Mr X's documents within a few weeks of making its decision. The Council has confirmed this was its usual practice. This was not enough time to keep the information for reviews of its decisions, 'appeals' or investigating complaints. Because the Council no longer holds Mr X's assessment or supporting documents, it cannot explain why it declined Mr X's application and would not be able to review its decision. This is fault. During our investigation, the Council agreed to keep these records in future. This will benefit future applicants but does not address the injustice Mr X has suffered.
23. The guidance requires the Council to assess applicants who do not have sufficient points in the relevant PIP category to decide whether they meet the requirements for a Blue Badge. The Council should also provide a detailed written response explaining why it has refused an applicant a Blue Badge. Based on the evidence available, the Council rejected Mr X because he did not have sufficient PIP points to automatically qualify but then failed to carry out a further assessment to determine his eligibility for a Blue Badge. It also failed to provide him with a detailed explanation for why it rejected his application and his request for a review. This is fault.
24. During our investigation, the Council agreed to contact Mr X, obtain a copy of his PIP assessment, clearly demonstrate it has considered it using both tests set out

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- in the guidance and explain in writing why it is declining or accepting his application. We welcome the action the Council agreed to take.
25. Guidance states councils should make sure there is a clear appeals procedure in place for unsuccessful Blue Badge applicants. Councils should signpost this process in its decision letters. The Council does not currently have a formal appeals process. The Council failed to follow the guidance and has not given good reason for departing from it. Therefore, this is fault.
 26. Our guidance, the [Principles of good administrative practice](#) says authorities should keep proper and accurate records and give reasons for their decisions. They should have clear and accessible appeal routes and provide timely advice on how and when to appeal or complain. The Council failed to follow this approach.
 27. Because of the Council's actions, Mr X has experienced an injustice. He had to complain to us, and he will have to resubmit his application and supporting documents to the Council, putting him to unnecessary time and trouble.
 28. We can investigate matters which come to our attention during an investigation, if a member of the public who has not complained is likely to have suffered an injustice as a result. It is highly likely that other applicants the Council refused a Blue Badge have been disadvantaged by the lack of appeals process in place, and possibly because of its hasty destruction of documentation relating to Blue Badge applications. The Council should take action to identify these people and offer them a fresh assessment.
 29. The Council has confirmed its system will not allow it to identify pending or rejected applicants and so it has proposed to post a message on its website inviting unsuccessful applicants to contact it. This is an appropriate action for the Council to take to satisfy our requirements.

Conclusions

30. The Council is at fault because it failed to interpret the guidance correctly, did not put an appeals process in place and did not keep sufficient records of the decisions it made along with the reasons for these decisions. Because of this Mr X was put to time and trouble making his complaint and it is likely others have been negatively affected by the Council's actions.

Recommendations

31. 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*)
32. In addition to the above requirements, the Council has agreed to do the following:
 - apologise to Mr X to recognise the time and trouble he has been put to because of this matter;
 - assess Mr X's eligibility for a Blue Badge, using both tests set out in the guidance if he does not automatically qualify, and explain the outcome to him. The Council should make sure the assessment is in line with the guidance;
 - review its procedures to make sure it is assessing Blue Badge applicants using both tests for eligibility in line with the guidance;

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- carry out training for relevant staff to make sure they are aware of the procedures;
 - implement an appeals procedure, in line with the guidance for refused Blue Badge applicants;
 - keep its records about unsuccessful Blue Badge applications for at least a year so it can respond to any complaints and these complaints can be reviewed by us;
 - amend its information and records policy to show how long it will keep Blue Badge records in future; and
 - invite any rejected applicants from the last six months to submit their applications for reconsideration.
33. The Council has accepted our recommendations to remedy the complaint.

Decision

34. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mr X. The Council should take the action identified in paragraph 32 to remedy that injustice.