

1 May 2024

Complaint reference:
23 001 858

Complaint against:
London Borough of Tower Hamlets

The Ombudsman's final decision

Summary: Mr X complains that the Council did not properly deal with a Blue Badge or taxi-card application properly. The Council is at fault because it delayed dealing with Mr X's Blue Badge and taxi-card applications and did not make consistent reasonable adjustments. Mr X suffered avoidable distress and incurred time and trouble. The Council should apologise to Mr X, pay Mr X £200 for distress and £100 for time and trouble, provide guidance to staff, provide an action plan and refer to the Cabinet Member responsible.

The complaint

1. The complainant, whom I shall refer to as Mr X, complains that the Council has not dealt properly with his taxi-card and Blue Badge applications because:
 - It delayed dealing with his taxi-card application from September 2022 and his Blue Badge renewal from January 2023;
 - It did not follow the right process for dealing with his taxi-card application and Blue Badge renewal due to:
 - a) failing to make reasonable adjustments during the application processes;
 - b) requiring him to provide PIP evidence multiple times;
 - c) failing to take and consider medical evidence about his applications;
 - d) Not considering whether he needed to have an assessment and requiring him to undergo an unnecessary one;
 - e) Telling him he could not have a taxi-card because his address had changed;
 - f) Informing him he could apply for his Blue Badge renewal 6 months in advance, then requiring his carer to remind it about his Blue Badge renewal as it could not be renewed until 1 week before it expired;
 - g) failing to meet its standards of service (14 days for taxi-cards, 12 weeks for Blue Badges);
 - It did not have a system viewable by all staff, to record reasonable adjustments so Mr X did not have to repeatedly advocate for and repeat his reasonable adjustments or be contacted in a way which is not accessible for him.
 - It did not handle his complaints properly due to:
 - a) Failing to respond to his verbal complaints of January and April 2023.

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- b) Failing to make reasonable adjustments to enable him to complain;
 - c) Refusing to take his complaint over the telephone;
 - d) Failing to take his full complaint details;
 - e) Failing to investigate his complaints.
2. Mr X says his applications for a Blue Badge and taxi card were delayed, he should not have had to undergo an assessment and he incurred time and trouble providing documents multiple times.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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. Our role is not to ask whether an organisation could have done things better, or whether we agree or disagree with what it did. Instead, we look at whether there was fault in how it made its decisions. If we decide there was no fault in how it did so, we cannot ask whether it should have made a particular decision or say it should have reached a different outcome.
5. When considering complaints, we make findings based on the balance of probabilities. This means that we look at the available relevant evidence and decide what was more likely to have happened.
6. When considering complaints we make findings based on the balance of probabilities. This means that we look at the available relevant evidence and decide what was more likely to have happened.
7. An organisation should not adopt a blanket or uniform approach or policy that prevents it from considering the circumstances of a particular case. We may find fault in the actions of organisations that 'fetter their discretion' in this way.
8. 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)
9. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)

How I considered this complaint

10. I spoke to Mr X about his complaint and considered documents he provided. I made enquiries of the Council and considered its response and the supporting documents it provided.
11. Mr X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

Law, guidance and policies

The Equality Act

12. The Equality Act 2010 provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. It offers protection, in employment, education, the provision of goods and services, housing, transport and the carrying out of public functions.

The Equality Act makes it unlawful for organisations carrying out public functions to discriminate on any of the nine protected characteristics listed in the Equality Act 2010. They must also have regard to the general duties aimed at eliminating discrimination under the Public Sector Equality Duty. The 'protected characteristics' referred to in the Act include disability.

13. The reasonable adjustment duty is set out in the Equality Act 2010 and applies to any body which carries out a public function. It aims to make sure that a disabled person can use a service as close as it is reasonably possible to get to the standard usually offered to non-disabled people.

Service providers are under a positive and proactive duty to take steps to remove or prevent obstacles to accessing their service. If the adjustments are reasonable, they must make them.

The duty is 'anticipatory'. This means service providers cannot wait until a disabled person wants to use their services, but must think in advance about what disabled people with a range of impairments might reasonably need.

Taxi-card Scheme

14. The London Taxi-card scheme provides subsidised door to door journeys in licensed taxis and private hire vehicles for London residents who have serious mobility or visual impairments. It is funded by the London boroughs and Transport for London and managed by London Councils on their behalf.
15. An applicant is automatically eligible for a Taxi-card if they:
 - Receive the Higher Rate Mobility Component of the Disability Living Allowance.
 - Receive 8 points or more for the Moving Around Activity component of the Independence Payment.

The Blue Badge Scheme

16. The Department for Transport's (DfT) Blue Badge Scheme helps people with severe physical mobility problems, or other conditions affecting their mobility, to access goods and services. It does this by allowing them, or their carer, to park near their destination. The scheme gives parking concessions to Blue Badge holders. Councils are responsible for the day-to-day administration and enforcement of the scheme. This includes assessing applicants' eligibility for the Badge.
17. Since August 2019 the guidance has included the introduction of assessment criteria for people with severe mobility problems caused by non-visible ('hidden') disabilities.
18. The DfT guidance sets out what assessors may wish to consider when assessing a person's mobility. The guidance is non-statutory. This means councils do not have to follow it, but most councils do. We expect councils to explain if they decide not to follow such guidance.

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19. The guidance says councils must make sure they only issue Badges to residents who satisfy one or more of the criteria set out in legislation.
 20. There are two types of eligibility criteria:
 1. where a person is eligible without further assessment, they will receive a Blue Badge;
 2. where a person is eligible subject to further assessment, they have to fulfil one of two criteria to qualify for a Badge. They must:
 - drive a vehicle regularly, have a severe disability in both arms and be unable to operate, or have considerable difficulty operating, all or some types of parking meter; OR
 - have a permanent and substantial physical or hidden disability that causes inability to walk or very considerable difficulty in walking.
 21. Applicants who can walk more than 80 metres and do not display very considerable difficulty walking for any other reason, including very considerable psychological distress, or serious risk to themselves or others, would not be eligible. If an applicant is unhappy with the outcome of an assessment, they may ask the council to review the decision.

The Blue Badge Guidance

22. All members of staff who deal regularly with applicants and Badge holders should be included in the local authority's Disability and Equality Awareness training programme. (Para 1.10)
23. People who may be issued with a Badge without further assessment are those who are more than three years old and fall within one or more of the following descriptions:
 - receives the mobility component of Personal Independence Payment (PIP) and has obtained 8 points or more under the "moving around" activity
 - receives the mobility component of PIP and has obtained 10 points specifically for descriptor E under the "planning and following journeys" activity, on the grounds that they are unable to undertake any journey because it would cause them overwhelming psychological distress
24. If an applicant does not meet the required score for either mobility activity, then they fail to meet either of the above 'eligible without further assessment' PIP criteria and may be considered instead under the 'subject to further assessment' criteria. (Para 4.4)
25. If the applicant submits a document as proof of evidence that does not specify the descriptor through which they are in receipt of PIP, the local authority should not issue a Blue Badge. (Para 4.13)
26. An applicant in receipt of a score of 10 points under Activity 11, descriptor E of the "planning and following a journey" activity of the mobility component of Personal Independent Payment will have a decision letter from the Department of Work and Pensions. Under the planning and following a journey section, the letter will describe the barriers claimants may face that are associated with mental, cognitive, or sensory ability when making a journey. For the applicant to be eligible for a Blue Badge without further assessment, they must receive the following descriptor: "Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant" (10 points). No other descriptor will qualify. (Para 4.14)

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27. If the applicant submits a document as proof of evidence that does not specify the descriptor through which they are in receipt of PIP, the local authority should not issue a Blue Badge. (Para 4.18)
 28. If it is not self-evident to a local authority on the basis of the information available to them, from the applicant and health or social care practitioners, whether the applicant falls within these descriptors, then a referral should be made to an expert assessor for certification. (Para 4.27)
 29. Following the 2019 revisions to the scheme eligibility criteria, the expert assessor role (previously carried out by independent mobility assessors) will continue to allow for such impartial mobility assessments as typically undertaken by OTs and physiotherapists. The DfT envisages that local authorities will continue to draw upon them as they currently do; to help them determine (relative to the published scheme criteria) the eligibility of applicants whose difficulty whilst walking relates primarily to physical factors they experience during the course of a journey. (Para 4.34)
 30. In respect of physical disabilities and/or non-visible ('hidden') conditions, only where a local authority cannot satisfy itself that an applicant meets, or does not meet, the eligibility criteria, based on the evidence provided by the applicant would it be expected to appoint an 'expert assessor'. Most applicants would reasonably be expected to demonstrate a health/social care history that is consistent with having an enduring and substantial disability that causes them very considerable difficulty when walking between a vehicle and their destination, therefore it is anticipated that appointing an expert assessor would be by exception. (Para 4.36)
 31. Local authorities should not expect applicants to 'self-identify' the basis upon which they may qualify for a Blue Badge under the 'subject to further assessment' criteria.

The DfT's view is that, for 'subject to further assessment' applications, local authorities will continue to cross-check local authority health and social care records wherever possible and subject to the relevant consents being received from a Blue Badge applicant, to seek evidence of eligibility/non-eligibility in relation to the 'subject to further assessment' criteria. (Para 4.87)

32. In many cases, where an applicant's eligibility for a Blue Badge is being considered because of a non-visible ('hidden') condition, it is anticipated that a local authority should not require an in-person assessment with the applicant. However, there may be exceptional cases where certification by an 'expert assessor' is considered necessary or appropriate - either in addition to, or in place of, the collation of insights from health/social care professionals such as specialist nurses or social workers. (Para 4.102)
33. More commonly, it is expected that officers will require evidence from health/social care professionals involved in the care of an individual to confirm the disability described in the application form. (Para 4.103)
34. Local authorities may be able to improve the efficiency of Blue Badge eligibility decision making by routinely checking existing council records to see whether there is sufficient existing evidence on an applicant to determine whether an applicant is 'self-evidently' eligible and to award, or to refuse, a Badge.

This can reduce the number of applicants with physical and/or non-visible ('hidden') enduring and substantial disabilities for whom certification from an expert assessor might be required. For such applicants, cross-checking typically

involves investigating whether they have already undergone a related assessment of their disability or mobility with a different council department. (Para 4.114)

35. Some Blue Badge applicants may be aggrieved not by the eligibility decision of the authority but rather the way in which the process has been conducted. They may, for example, be upset by the manner or conduct of local authority staff or view aspects of the process as unfair. assessment of their disability or mobility with a different council department. (Para 6.18)
36. In such cases these applicants should be made aware of the local authority's standard complaints procedure, in the same way that any other user of the local authority's services would be informed of their right to complain. Applicants should also be reminded that complaints can be brought to the attention of the Local Government and Social Care Ombudsman (Para 6.19)

What happened?

37. This is a brief chronology of key events. It does not contain everything I reviewed during my investigation.
38. Mr X was assisted to submit a taxi card application in October 2022. Mr X changed address, he notified the Council and this was updated on 13 January 2023.
39. Mr X was assisted to submit a Blue Badge renewal application in January 2023.
40. The Council required Mr X to undergo an assessment for his Blue Badge and taxi-card applications. The assessment was carried out by video call in March 2023.
41. Mr X was advised of the outcome of the assessment several days later. His Blue Badge renewal was agreed and his taxi-card application was successful.
42. The Council experienced a problem with the photograph for Mr X's taxi-card.
43. Mr X received his taxi-card in May 2023 and his renewed Blue Badge in July 2023.

Analysis

The Blue Badge renewal process

44. The Council says:
 - it advises renewal applications should be submitted at least three months prior to the date of expiry.
 - Where applications meet the automatic criteria a Badge is ordered in time for when the current Badge expires.
 - Where applications do not meet the automatic criteria they are required to go through an assessment with an independent expert assessor to ensure they continue to meet the Department for Transport's (DfT's) eligibility requirements for a Blue Badge. Due to the volume of applications the waiting time for an assessment is approximately two months. Once the assessment is complete the application will be processed with an outcome.

The taxi-card process

45. The Council says:

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- applications for a taxi card are submitted via London Councils (by the applicant). The application will be reviewed and uploaded to the database by London Councils.
 - If the applicant meets the automatic criteria London Councils will process the application and issue the pass.
 - If the applicant does not meet the automatic criteria, London Councils will pass over to the Council to review. If there is no requirement for an assessment the Council will process the application and issue the pass.
 - If there is a requirement for an assessment they will be added to the waiting list with our independent expert assessors. Once the assessment is complete the application will be processed with an outcome.
 - It operates a banding system for Taxi Cards, and there was a requirement for an assessment to identify the appropriate banding for the applicant.

Mr X's applications

46. Taxi-card application records show Mr X was assisted to submit his application with supporting information including his existing Blue Badge, a photograph, a letter about his eligibility for Personal Independence Payment (PIP), medical evidence in a letter from a Consultant Neuropsychiatrist and a report from his employer.
47. Old system records from London Councils show Mr X's taxi-card application evidence was reviewed by London Councils in December 2022 and placed by the Council onto a waiting list. On 13 January London Councils spoke to the Council who advised there could be another two weeks wait. New system records show the evidence with Mr X's application was approved by the Council on 19 January 2023. Mr X's application was noted as not automatically qualifying.
48. The PIP letter provided with Mr X's taxi-card application shows he was eligible for the enhanced rates for daily living needs and mobility needs from October 2019. The letter indicated that it was six pages long but only the first page was submitted. No information was provided regarding the descriptors, scores or reasons behind Mr X's PIP award.
49. Blue Badge application records show Mr X provided a photograph but did not provide any other supporting documents with his renewal application. Mr X was not assessed as automatically qualifying for a Blue Badge by the Council.
50. Mr X says he was assisted to provide evidence of his PIP entitlement to the mobility team in the Council several times and that the mobility team refused to take or look at medical evidence, social service assessments and housing records, in relation to his Blue Badge application.
51. The Council says, "*At no point did the Service decline to consider any details of his condition or medical and social care reports. No medical supporting evidence was provided with Mr X's application.*"
52. Contemporaneous notes made by Mr X's carers in early February 2023 support Mr X's description of events. The Council told me that it does not have access to the relevant systems or resources to contact other departments in the Council about information already held about an applicant. On the balance of probabilities, the Council did not consider evidence offered by Mr X or that already held by other departments and Mr X was told he must undergo an assessment.

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53. The notes prepared by Mr X's carers also show he sent his PIP evidence to the Council on multiple occasions. On the balance of probabilities, Mr X did have to provide evidence about his PIP entitlement to the Council several times.
 54. The Council provided a copy of Mr X's PIP entitlement evidence. This shows he received a score of 12 points for the 'Planning and following a journey' descriptor but does not indicate the reason why. Mr X received no points for the 'Moving around' descriptor.
 55. Mr X did not automatically qualify for a Blue Badge based on his application because the evidence he provided did not show he met the criteria outlined above in paragraph 22.
 56. Mr X did not automatically qualify for a taxi-card based on his application because the evidence he provided did not show he met the criteria outlined above in paragraph 13.
 57. When it considered his Blue Badge and taxi-card applications, the Council should have reviewed and considered the other information provided by Mr X in his taxi-card application and that already held by other departments. The Council fettered its discretion by not considering this information. This is fault by the Council. Mr X did not suffer any injustice because he had to complete a mobility assessment in order for his taxi-card banding to be determined.

The assessment

58. Mr X's mobility assessment:
 - was carried out by a physiotherapist.
 - was recorded on an assessment tool for physical disabilities.
 - records physical and neurological conditions affecting mobility.
 - recommends a reassessment in 3 years.
59. As noted in paragraph 40 above, Mr X was advised of the outcome of the assessment several days later. His Blue Badge renewal was agreed and his taxi-card application was successful. The recommendation to reassess is a professional opinion. I have not investigated this further because Mr X did not suffer any ongoing significant injustice as a result of the assessment.

Delays

60. Mr X's Blue Badge application was approved and his replacement Blue Badge was issued before his previous one expired. Mr X therefore did not suffer any significant ongoing injustice as a result and I have not investigated this further.
61. The Council has already accepted that there were some delays to Mr X's taxi-card application being processed as a result of technical issues with London Councils implementing a new taxi-card system.
62. The Council says that Mr X did not submit a photograph with his taxi-card application. Supporting information from London Councils shows that Mr X was assisted to submit a photograph with his application.
63. Emails show the Council believed that Mr X's address was wrong and had managed to update it in April 2023. This is inconsistent with records that show London Councils updated Mr X's address earlier in January 2023.
64. The Council did not tell Mr X that he could not have a taxi-card because his address had changed. It told him it was having technical difficulties ordering the taxi-card to his new address.

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65. On the balance of probabilities, there were either problems with the system itself, or how the Council considered information that was on the old and new systems. London Councils operates the taxi-card system on behalf of the Council. As per paragraph 8 above, in either case the Council remains responsible for this.
66. As Mr X did not meet the automatic qualifying criteria in his taxi-card application, London Councils passed it to the Council to review. The Council has provided no evidence to show how it reviewed his application and why it considered there was a requirement for an assessment.
67. Contemporaneous notes prepared by Mr X's carers show the Council said he must undergo an assessment because of Council policy. The Council has not provided a copy of any policy and has told me in its enquiry response that it follows the DfT Blue Badge guidance.
68. The Council says it does not have the facilities or resources to cross check health and social care records for each application that it receives.
69. On the balance of probabilities, the Council did not review his blue badge application and supporting evidence or make a reasoned decision why he required an assessment, in accordance with the Blue Badge guidance outlined above in paragraphs 31-35. It passed Mr X's blue badge application on for a mobility assessment simply because it did not meet the automatic eligibility requirements on the basis only of information submitted at the time of application. This is fault by the Council. Mr X did not suffer any injustice because his blue badge was approved and issued before his existing one expired.
70. The Council required Mr X to complete a mobility assessment in order to determine his banding for a taxi-card. This is not fault by the Council. However, there were delays to processing his taxi-card application in the periods 13 December 2022 to 1 March 2023, (before the mobility assessment was requested), and 20 March to 15 May 2023, (when the taxi-card was issued). The Council did not meet its standards of service of 14 days for issuing taxi-cards. This is fault by the Council. Mr X's taxi-card was delayed for four months and he suffered a loss of service and avoidable distress.

Reasonable adjustments

71. The Council says:
- All reasonable adjustments were made in both the application for a Taxi Card and Blue Badge.
 - Mr X stated that he was unable to deal with e-mails or long telephone calls and wanted a Zoom call to discuss his case. The Council could not facilitate this because we do not have the facility to make a Zoom calls.
 - The systems the Council uses to record reasonable adjustments are viewable by all Mobility Support officers and all reasonable adjustments were made.
72. The Council has accepted that it provides Disability Awareness training but says, "*records are unclear as to whether the Mobility Support team have completed the course.*" On the balance of probabilities, the Council's team have not completed this training.
73. Emails from Mr X's support worker on his behalf clearly identify Mr X requested telephone calls in response to queries about his applications, as reasonable adjustments. On a number of occasions the Council responded by email. Emails show the Council made contact by email after attempting to make contact by telephone on only one occasion..

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74. The Council has not provided any information or evidence about its system for recording reasonable adjustments. The Council has not provided any evidence to show how Mr X's reasonable adjustments were considered, whether any alternatives could be offered, or how they were recorded.
75. Contemporaneous notes made by Mr X's carer show that on one occasion, involving a separate matter, a Council staff member assisted Mr X by facilitating a document change in person and helping him complete the process online as a reasonable adjustment.
76. The Council's decision letter telling Mr X his Blue Badge application had been successful appears to be a standard form letter. It does not take account of Mr X's requests for reasonable adjustments and includes links to online services.
77. On the balance of probabilities, the Council did not consistently:
- consider alternative reasonable adjustments for Mr X;
 - maintain a viewable record of reasonable adjustments it would make for Mr X, viewable by all staff in the department; and
 - make the reasonable adjustments Mr X requested.

This is fault by the Council. Mr X suffered avoidable distress and incurred time and trouble having to repeat his request for reasonable adjustments.

Complaint handling

78. Contemporaneous notes made by Mr X's carer in early February 2023 show he called to make a complaint and recorded a complaint reference number. The Council says Mr X contacted it in January but did not want to proceed with a formal complaint.
79. Contemporaneous notes made by Mr X in April 2023 show he called one of the mobility team staff and explained he had still not had a response to his earlier complaint and requested that it be escalated to stage 2 of the Council's complaints procedure.
80. There is no evidence the Council formally responded to Mr X's complaint. The Council accepts the only recorded stage 1 complaint was acknowledged in July and responded to in August 2023.
81. The matter of reasonable adjustments is already covered in paragraphs 72 to 78.
82. The Council says, "*[Mr X] did not want these issues to be processed as a formal complaint. Furthermore, the Council has an Appeals Process for Blue Badge complaints and therefore the Corporate Complaints Procedure is not initiated in these instances. However, regular contact was made with Mr X via telephone, voicemails left and e-mails throughout the application process for both the Blue Badge and Taxi Card.*"
83. Mr X's complaint was about the processes not the outcome. The Council should have responded to his January complaint through its corporate complaints process.
84. On the balance of probabilities, Mr X did make a formal complaint to the Council in January but it was not actioned as such. The Council did not properly record, investigate or respond to Mr X's complaint. This is fault by the Council. Mr X had to complain to the Ombudsman.

Agreed action

85. To remedy the outstanding injustice caused by the fault I have identified, the Council has agreed to take the following action within 4 weeks of this decision:
- Apologise to Mr X for the fault I have found;
 - Pay Mr X £200 in respect of avoidable distress;
 - Pay Mr X £100 in respect of time and trouble;
86. To remedy the outstanding injustice caused by the fault I have identified, the Council has agreed to take the following action within 3 months of this decision:
- Provide guidance to staff regarding dealing with complaints about Blue Badge application processes properly through the corporate complaints process;
 - Share a copy of this decision with staff in the relevant departments to consider the lessons that can be learned from this case;
 - Provide an action plan showing how the Council will corporately record, assess, make decisions and deliver reasonable adjustments requested by its service users; and
 - Refer this decision, the action plan and the lessons learned outcomes to the relevant Cabinet Member and the Overview and Scrutiny Committee.
87. The Council should provide us with evidence it has complied with the above actions.

Final decision

88. I have found fault by the Council, which caused injustice to Mr X. I have now completed my investigation.

Investigator's decision on behalf of the Ombudsman