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| Cabinet 16 December 2020 |  TOWER HAMLETS |
| Report of: Ann Sutcliffe, Corporate Director Place | Classification: Unrestricted |
| Local Government and Social Care Ombudsman, Determination of Outcome | |

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| Lead Member | Dan Tomlinson, Cabinet Member for Public Realm |
| Originating Officer(s) | Mick Darby, Head of Parking |
| Wards affected | All Wards |
| Key Decision? | No |
| Forward Plan Notice Published | 25 November 2020 |
| Reason for Key Decision | This report has been reviewed as not meeting the Key Decision criteria. |
| Strategic Plan Priority / Outcome | A borough that our residents are proud of and love to live in; |

Executive Summary

The Local Government and Social Care Ombudsman issued a Report finding fault with the way in which Mrs B's application for a Personalised Disabled Bay for her son was dealt with by the council. The Ombudsman found there was significant fault in the handling of Mrs B's case causing her injustice.

The Council is in agreement with the Ombudsman recommendations and has taken steps to remedy the injustice these faults can cause disabled people.

Recommendations:

The cabinet is recommended to:

1. Note the content of the report
2. Note the actions being taken by Parking Services to remedy the situation

1 REASONS FOR THE DECISIONS

- 1.1 The Council accepts the Local Government Ombudsman's findings and will implement the recommendations made.

2 ALTERNATIVE OPTIONS

- 2.1 The Council does not wish to challenge the decision of the Local Government Ombudsman, which is the only alternative option available.

3 DETAILS OF THE REPORT

- 3.1 The Commission for Local Administration in England, commonly known as the local Government Ombudsman (LGO), was established under the Local Government Act 1974 (amended by the Local Government and Housing Act 1989) to consider complaints against local authorities and other public bodies. Their remit is broad and covers actions of the authority that fall under the corporate complaint's procedure, statutory Adults Social Care complaints and statutory Children's Social Care complaints. The notable exception to their remit, since April 2011, is non-strategic housing complaints which are considered by the Housing Ombudsman.
- 3.2 Since 2013, arising from the Local Government and Public Involvement in Health Act 2007, the LGO has issued and published either a 'statement of reasons' or 'report' of their findings for each complaint.
- 3.3 Over and above this requirement, complaints to the Council where fault (or maladministration) is found and a formal report against the council is issued, should also be considered by Cabinet (executive functions) and full Council (non-executive functions).

Summary

- 3.4 This complaint relates to a personalised disabled parking bay application. Mrs B complained that the Council was wrong to refuse her son, C, as C has autism, severe behavioural difficulties, physical problems as a result of a birth defect which cause muscle weakness, and asthma. Although he has a Blue Badge, the family frequently have to park far from their home and have great difficulty transferring C between the car and their home. This can also be very distressing for C. Mrs B says that C needs a personalised disabled bay so that they can safely transfer him between his special need's pushchair and their car.

Findings: The Council was at fault when it:

- 3.5 With regard to the Blue Badge application, the decision letter did not give clear reasons for refusal of the Blue Badge as set out in the guidance. It also did not give any reasons why it had changed its decision and awarded a Blue Badge.
- 3.6 Should have explained that it had awarded a Blue Badge on a discretionary basis, having regard to the assessor's observations of the extreme difficulty experienced by the family. Had it done so; Mrs B would have been able to put this forward in support of her parking bay application.

- 3.7 Councils must also not unreasonably fetter their discretion, i.e. they must allow for occasions where the specific circumstances of a case make it appropriate for them to depart from the general terms of their policy. Aside from that general discretion, the Council's parking bay policy also allows for exceptions to its policy where *"the applicant requires constant attendance, or the driver is unable to handle required medical apparatus in addition to the applicant"*.
- 3.8 The extensive correspondence on this case did not show any evidence that the Council considered C's application properly under the *"exception"* clause in the policy. Moreover, the Council dismissed C's award of higher rate mobility DLA as being a lower threshold than its own criteria without either seeking further clarification of the basis for that award or properly considering its implications.
- 3.9 There are very specific circumstances under which higher rate mobility DLA can be awarded and the threshold is very high. It is clear that C does not meet the first five criteria for an award of higher rate mobility DLA. So, logically, it follows that C's award must have been made under either the *"severe mental impairment"* criteria or on the basis that C is *"virtually unable to walk"* due to a physical disability. The award of higher rate mobility DLA was directly relevant to Mrs B's appeal and should have been explored further in that the Tribunal had determined either that C was *"virtually unable to walk"* or that he *"requires constant attendance"*. We also consider that the Council's dismissal of that award as being of a lower threshold than the Council's own mobility criteria suggests a lack of consideration of the implications of such an award.

4 Action

- 4.1 To remedy the injustice to C and his family, the Council has agreed, within one month of the decision date of the report to:
- pay the family £1,000 to reflect the significant distress and inconvenience caused as a result of the delay installing a parking bay;
 - ensure that officers are aware of the implications of an award of higher rate mobility Disability Living Allowance and that decisions relating to parking bay applications take into account both the exceptions in its policy and the Council's general discretion; and
 - ensure that decision letters on both Blue Badge and parking bay applications contain sufficient information to enable the applicant to clearly understand the reasons for that decision.
- 4.2 Within three months of the decision date of this report, it will:
- install a parking bay for C;
 - review its parking bay policy, having regard to how it should take into account hidden disabilities; and

- then write to those applicants who have been refused a parking bay over the past year and inform them of the changes to its policy.
- 4.3 Some remedial tasks have already been carried out and Parking and Mobility Services have put in place measures to meet all recommended actions.

5 EQUALITIES IMPLICATIONS

- 5.1 One of the recommendations by the Ombudsman was for the Council to Review its parking bay policy, having regard to how it should take into account hidden disabilities. The policy has been reviewed by the Parking team to ensure hidden disabilities are taken into account.
- 5.2 It was also suggested by the Ombudsman for the Parking team to write to those applicants who have been refused a parking bay over the past year and inform them of the changes to its policy, which also has been completed.

6 OTHER STATUTORY IMPLICATIONS

- 6.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
 - Consultations,
 - Environmental (including air quality),
 - Risk Management,
 - Crime Reduction,
 - Safeguarding.
 - Data Protection / Privacy Impact Assessment.

- 6.2 There are no other statutory implications

7 COMMENTS OF THE CHIEF FINANCE OFFICER

- 7.1 There are no material financial implications emanating from this report. All costs associated with compensating the family, installing the disabled parking space and reviewing policies surrounding hidden disabilities will be contained within existing budget provision.

8 COMMENTS OF LEGAL SERVICES

- 8.1 The Executive (Mayor and Cabinet as defined in section 9(c) of *the Local Government Act 2000*) is authorised to note the proposed recommendations in this report as these comprise a 'Key Decision' as defined in Section 3 of the Council's Constitution. Paragraph 6 of Section 3 of the Constitution defines 'Key Decision' as an executive decision which is likely to be significant in terms of its effects on communities living or working in an area comprising two

or more wards or electoral divisions. Once implemented, the recommendations in this report are likely to have a significant effect on members of the public in the borough who are in the same circumstances as the complainant.

8.2 The functions and duties of the Local Government and Social Care Ombudsman ('the Ombudsman') are set out in the Local Government Act 1974 ('the Act'). The Act sets out the statutory functions of the Ombudsman, which include the authority to:

- 8.1.2 Investigate complaints against councils and some other authorities;
- 8.2.2 Investigate complaints about adult social care providers from people who arrange or fund their own adult social care; and
- 8.3.2 Provide advice and guidance on good administrative practice.

8.3 Under s26A or s34B of the Act member of the public who claims to have sustained injustice in relation to a matter can make a complaint to the Ombudsman.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Draft report by the Local Government and Social Care Ombudsman

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None

Officer contact details for documents:

Mick Darby, Head of Parking