

The Ombudsman's final decision

Summary: Ms B complains that there was fault in the way the Council dealt with her application for home to school transport for her son, C, and her appeal against its decision to refuse the application. The Council was at fault in failing to offer Ms B the opportunity to attend the appeal hearing and make verbal representations. The Council has agreed to offer Ms B a new appeal to remedy the injustice caused.

The complaint

1. Ms B complains that there was fault in the way the Council dealt with her application for home to school transport for her son and her appeal against its decision to refuse transport.

The Ombudsman's role and powers

2. 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*)
3. If we are satisfied with a council'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

4. I have considered all the information provided by Ms B, made enquiries of the Council and considered the documents it provided. I have also considered statutory guidance and the Council's home to school transport policy.
5. I have written to Ms B and the Council with my draft decision and considered their comments.

What I found

Law and policy on home to school transport

6. Local authorities must provide free home to school transport for 'eligible children' to attend their 'qualifying school'. This is the nearest school with places available

that provides education appropriate to the age, ability and aptitude of the child, and any special educational needs the child may have.

7. Eligible children include those who:
 - live outside 'statutory walking distance' from the school (two miles for children under eight, three miles for children over eight;
 - cannot reasonably be expected to walk to the nearest suitable school because the nature of the route is deemed unsafe to walk;
 - are entitled to free school meals, or whose parents are in receipt of the maximum level of working tax credit, for transport to one of the three nearest qualifying schools. Secondary children must live more than two miles but not more than six miles from that school; and
 - those in the low income category as above where the school is between two and 15 miles and it is the nearest school preferred on grounds of religion or belief. (*Education Act 1996, Section 508 B and schedule 35B*)
8. Councils also have discretion to provide transport for children who are not entitled to free transport. (*Education Act 1996 Section 508 C*)

Key facts

9. Ms B's son, C, has been attending School X since 2015. In June 2016 Ms B applied to the Council for financial assistance for C's travel to and from school because of a change in circumstances. Ms B is a single parent and, in February 2016, she became unemployed because of ill-health and was struggling to pay C's travel costs. C receives free school meals and the family is classed as low income under the Council's criteria. School X is 12.3 miles from C's home address by car. Ms B did not want to move C to a school nearer to home as he was thriving at School X.
10. The Council's Travel Solutions team declined Ms B's application. Ms B requested a review of the decision.
11. The decision was reviewed by an officer from Transport and Travel Services. She confirmed C was not entitled to free transport assistance under the Council's policy which states, "Pupils of secondary school age are entitled to free transport to their nearest qualifying (catchment) school if that school is 3 miles or more from home. Free transport to a preferred school is only available if that school is 3 miles or more from home and closer than the catchment area school". She explained that School X was 12 miles from C's home whereas the catchment school is only 1.56 miles from home.
12. She also explained that C was not entitled to transport assistance to School X under the low income criteria. The Council's policy states, "Pupils of secondary school age from low income families are entitled to free transport to one of the three nearest qualifying schools (catchment or preferred) between 2 and 6 miles from their home". But School X did not fall within this provision being 12 miles from C's home address. The officer therefore upheld the decision not to award free transport.
13. Ms B appealed against this decision. The appeal was considered by the Transport Review Panel in August 2016.
14. The typed notes of the panel hearing show the panel considered Ms B's arguments that: she was a single parent and had paid C's bus fares until recently but had not been employment since February 2016 due to ill-health and was now

on benefits; and C was thriving at School X and has a positive ethnic minority male leadership role model there so he should not be moved.

15. The panel also noted that Ms B's social worker contacted the Council stating Ms B's mental health had been affected by losing her employment and that the worry of transporting C to school was contributing to this. The panel also considered the fact that C was attending a preferred school rather than his catchment school.
16. The panel upheld the decision to refuse transport. The Council wrote to Ms B explaining the panel had considered her reasons for choosing School X and her current circumstances. They sympathised with her situation but did not consider her circumstances to be exceptional in relation to the home to school transport policy. The letter confirmed the panel's decision not to award travel assistance for C.

Analysis

The Council's decision to refuse transport

17. It is not the Ombudsman's role to decide whether someone should receive free transport to school. We can only consider if there was fault in how the Council reached its decision.
18. I have considered the Council's home to school transport policy which says free transport is available for secondary school children living more than three miles from the nearest school. It also says that, if the family has a low income and the child is in secondary school, it will provide free transport if the child attends one of their three nearest schools and the school is between two and six miles from their home. It will also provide free transport if the child attends their nearest faith school and the school is between two and 25 miles from their home.
19. I am satisfied the Council's policy complies with school transport law and that officers acted in accordance with the policy when deciding Ms B's application. In the absence of administrative fault, there are no grounds to criticise the decision that the Council has no duty to provide transport for C.

The appeal panel's decision

20. I have also considered how the appeals panel dealt with Ms B's appeal. I have read the minutes of the appeal and the decision letter sent to Ms B.
21. The Education Act 1996 gives local authorities discretionary powers to go beyond their statutory duties and provide transport for children who are not entitled to free transport. In addition, local authorities may pay all or part of the reasonable travel expenses of children who have not had travel arrangements made either under the Council's statutory duty or under their discretionary powers to make travel arrangements. It is for the individual local authority to decide whether and how to apply this discretion.
22. The panel needed to consider Ms B's circumstances to decide whether to exercise discretion to make travel arrangements or contribute towards C's travel expenses.
23. Although the minutes show the panel considered Ms B's arguments as put forward in her appeal letter, it did not hear verbal arguments from her.
24. The Home to School Travel and Transport Guidance issued by the Department for Education states that, within 40 working days of receipt of the local authority's stage 1 written decision, the parents may "request an independent appeal panel considers written and verbal representations from both the parent and officers

involved in the case and gives a detailed written notification of the outcome”. This is statutory guidance and should be followed by the Council.

- 25. The Council has confirmed Ms B was not invited to attend the panel hearing and make verbal representations but she was advised she could submit further evidence for consideration by the panel.
- 26. I find the Council’s failure to allow Ms B the opportunity to make verbal representations to the panel was fault. The Guidance clearly states parents should be given this opportunity. Although the panel considered Ms B’s written arguments, verbal arguments can often be more powerful and it is possible the outcome may have been different if Ms B had addressed the panel in person. The uncertainty of whether or not this would have been the case causes Ms B a significant injustice.

Agreed action

- 27. To remedy the injustice caused, the Council has agreed to offer Ms B a fresh appeal with a different panel and clerk.

Final decision

- 28. I find there was fault in the appeal leading to injustice.
- 29. The Council has agreed to remedy the injustice caused so I have completed my investigation.

Investigator’s decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint about the refusal of admission to the complainant's preferred school for his child. This is because we are unlikely to find evidence of fault causing significant injustice to the complainant in the way in which the independent appeal panel (IAP) hearing the complaint made its decision.

The complaint

1. The complainant, who I refer to here as Mr D, says that:
 - The clerk and a panel member were changed at short notice without informing him;
 - One of the panel members appeared to be asleep;
 - The decision was based on class numbers not the relevant factors that he raised;
 - Subsequently a child left the class and was not replaced; and
 - The decision letter did not cover all the points that he raised in the hearing.

The Ombudsman's role and powers

2. 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'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we would find fault, or
 - the fault has not caused significant injustice to the person who complained.

(Local Government Act 1974, section 24A(6), as amended)

How I considered this complaint

3. I considered the information provided by Mr D and by the Council. I have also sent Mr D a draft decision for his comments.

What I found

4. Mr D decided to change his children's school, and applied for places at his preferred school. Three of his children now have places at the School, but the fourth child was refused a place as the school is full.
5. Mr D appealed against the refusal, but the appeal was refused. Mr D has now complained to the Ombudsman, as he believes his appeal was not heard properly.
6. Mr D firstly complains that the clerk and an IAP member were changed at short notice without informing him.
7. There is no fault in the clerk being changed and the Council is under no obligation to inform the appellants.
8. The Council says it wrote to Mr D regarding the change to the panel membership, but it cannot produce any evidence to show that it did so. As it has copies of letters sent to the other appellants, my view, on the balance of probability, is that Mr D's letter was overlooked. This is fault.
9. However, the clerk's notes show that the panel members were introduced at the start of the hearing and assurances given regarding their independence. If Mr D had any concerns about the new panel member he could have raised them at that point. As he did not do so, and has not raised any concerns to me about the panel member, I consider the lack of the letter to him did not cause him significant injustice.
10. Mr D further says that one of the members of the IAP hearing the case appeared to be asleep, as her eyes were closed. I have looked at the clerk's notes for the hearing and I see no evidence to support the view that any panel member was sleeping. All three members asked questions at some point in the proceedings, and the lack of questions during part of the hearing is not evidence of being asleep.
11. Mr D also complains that the decision to refuse entry was made on the basis of class numbers rather than on his case. Schools must admit up to their PAN, but beyond that, can only admit if directed to do so. As such, the class numbers are the first point to be established in an education admissions appeal. After that, however, the IAP must consider the competing cases made by the School. The clerk's notes show that the panel did consider carefully all of the other points raised by both the Council and Mr D, but felt that Mr D's case was not made.
12. The IAP provided strong reasons not connected to the question of roll numbers, for its decision. They placed weight on the facts that Mr and Mrs D chose the school that they now want to leave; Mr and Mrs D chose to apply for a school which is 7 miles from their home, with the obvious potential for transport difficulties; and that the preferred school is not the only school which can provide for their child's support needs.
13. Mr D also says that the decision letter refusing his appeal is not compliant with the Code of Practice because it doesn't cover everything he raised in the hearing. I consider the letter an appropriate summary of the points raised and discussed. Mr D specifies that the letter does not address his point that the school has previously managed with higher numbers in that year group previously. However, this is not a relevant consideration. The numbers in the class were above the School's PAN and the decision the IAP had to make is whether the School had

made a case that an additional child would prejudice the provision of efficient education this year.

14. Mr D asserts that “the School” confirmed his child could be accommodated but the School’s case does not support this assertion. Mr D says that is what the Headteacher told him, but that would be inadmissible under the School Admission Appeal Code..
15. Mr D alleges that the IAP didn’t consider properly the problems of having to travel to two different schools. In fact it did discuss the issue as is recorded in the clerk’s notes, but concluded this was the parents’ responsibility as all the children could have remained together at the school they were attending. Any fault in not recording this in the refusal letter did not affect the outcome of the appeal and did not cause injustice.
16. Finally, Mr D says subsequent to the appeal, a child has left the class, bringing the numbers down to 20. He feels that as the School had agreed to admit 21, a place should be offered to maintain that number.
17. This is not a matter that the IAP could have considered so it cannot form part of this complaint. However, as the 21st child was the second of a pair of twins it would be a reasonable decision to admit both children but not to replace the child leaving the class.

Final decision

18. Subject to any comments Mr D might make, my view is that the Ombudsman should not investigate this complaint. This is because the minor faults in the handling of the case did not cause significant injustice warranting further investigation.

Investigator’s decision on behalf of the Ombudsman

The Ombudsman's draft decision

Summary: The Ombudsman will not investigate this complaint about a child protection investigation carried out by the Council. This is because we are unlikely to find fault in its actions.

The complaint

1. The complainants, who I refer to here as Mr and Mrs X, say that the Council:
 - Investigated unexplained injuries to their son in an unprofessional and inappropriate manner;
 - Has not corrected inaccurate information in the Closing Statement on their file; and
 - Has not investigated their complaint properly.

The Ombudsman's role and powers

2. 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'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we would find fault, or
 - there is another body better placed to consider this complaint.

(Local Government Act 1974, section 24A(6), as amended)

How I considered this complaint

3. I considered the information provided by Mr and Mrs X and by the Council. The Council sent me copies of the complaints from and responses to Mr and Mrs X. I have not spoken to any one at the Council. I have sent Mr and Mrs X a draft decision for their comments.

What I found

4. Mr and Mrs X's son was referred to social services due to bruising on his legs. He was examined by a paediatrician who concluded that some of the bruising appeared to be non-accidental but unexplained.

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5. This triggered the Council's child protection procedures, and a child protection plan was put in place. No further action was taken, and the child is no longer subject to a child protection plan.
 6. Mr and Mrs X explain that the whole process has been deeply distressing to the family. They were unhappy with the action taken, and complained to the Council.
 7. Mr and Mrs X questioned whether the paediatrician was qualified to judge whether there was evidence that some of the bruising was non-accidental. They felt that if the bruising was unexplained then it could have been accidental, and the interventions taken were therefore unnecessary and overzealous.
 8. Mr and Mrs X also felt that the Closure Statement by the Council retained on their file was inaccurate and misleading.
 9. The Council investigated the complaint, but did not uphold it. It was very clear that it considered the paediatrician to be a qualified expert who had stated that some of the bruising was suggestive of non-accidental injury, although unexplained. This meant that the Council had to follow its child protection procedures.
 10. The Council further said that the information on the files was an accurate portrayal of the paediatrician's findings.
 11. Mr and Mrs X have now brought their complaint to the Ombudsman, but we will not investigate it.
 12. Where the Council considers it has been given evidence of unexplained non-accidental injuries, it must investigate the matter through its child protection procedures and there is no fault in it doing so. I do not accept Mr and Mrs X's view that the Council has inflated and misrepresented the medical opinion given by the paediatrician. It may not have quoted him verbatim, but it has reflected his view accurately and used it appropriately to support its decisions.
 13. It also has a duty to retain on file the judgements that have given rise to the investigation. Mr and Mrs X do not agree with the Closure Statement on the file, consider it misleading and would like it to be rewritten. However it is an accurate portrayal of professional opinion reflecting the reasons for the Council's decision. Mr and Mrs X's differing view of that decision does not make the Closure Statement wrong.
 14. Finally Mr and Mrs X complain that the Council refused to progress the complaint to stage two of its procedures, as they say there should have been an independent investigation, which they feel the stage one procedures did not provide. However, it is normal practice in complaint handling for the initial stage to be looked by the relevant team, as they are best placed, in many cases, to resolve matters quickly.
 15. Although a stage two investigation does then provide an independent view, in this case the Council has explained that it could not provide the outcome that Mr and Mrs X seek. A complaint investigation cannot challenge the core decision that the medical evidence was sufficient to trigger Child Protection procedures.
 16. I do not therefore consider there was fault in its refusal to progress the complaint to stage two.

Final decision

17. The Ombudsman will not investigate this complaint. This is because we are unlikely to find fault in the Council's actions

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mrs X complains about noise and vibration from the traffic calming measures installed in the road behind her home. The Ombudsman will not investigate this complaint. This is because it is late and I have not seen any evidence of fault in the way the Council made its decision.

The complaint

1. Mrs X complains about noise and vibration from traffic caused by traffic calming measures installed by the Council in the road behind her home.

The Ombudsman's role and powers

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
3. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
4. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)

How I considered this complaint

5. I considered the information provided by Mrs X, including the Council's response to her. I have also considered the information available on the Council's website.
6. Mrs X commented on the draft version of this decision.

What I found

7. Following three serious road accidents involving children, the council proposed installing three raised platforms on the road behind Mrs X's home. In January 2017, it sent out consultation letters to the resident who live closest to the site and others such as a school, a children's centre, the Police and a bus company.
8. Mrs X responded to the consultation. She objected to the Council's proposals because of noise from vehicles crossing the raised platforms. The Council received two other objections and three letters of support.

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9. In June 2017, the Council carried out a formal consultation. It wrote again to those it had contacted previously. It also placed a notice in the press and put up site notices. It did not receive any responses.
 10. A case officer wrote a report for the Council's Communities and Place Committee. This report noted the objections received by Mrs X and others. However, it confirmed that while other methods of traffic calming had been considered, the three raised platforms was the preferred choice for a bus route. It also noted the council could not decide to take no action, given the previous child casualties.
 11. The officer report recommended the Council approved the scheme. The committee agreed with the recommendation. The platforms were installed by the end of August 2017.

Assessment

12. The Ombudsman cannot consider complaints that we receive more than 12 months after the person became aware of the matter, unless there is a good reason to do so.
13. Mrs X was aware of the noise she says is caused by the traffic calming in August 2017. We did not receive her complaint until December 2018. Therefore, it is late.
14. I have considered whether to exercise my discretion and investigate this late complaint. By law, the Ombudsman may consider only the administrative process by which a council has reached a decision; he may not question the merits of a decision taken without administrative fault. He can consider matters such as whether a council took into account all information which was material or took into account information which was not material. Or whether a council has failed, without good reason, to follow guidance on relevant matters; and whether there has been any bias or procedural impropriety.
15. The council carried out two consultations and considered a report on the proposal before it decided to install the traffic calming measures. Mrs X's objection due to noise was noted. However, the Council decided the scheme was appropriate.

Final decision

16. I will not investigate this complaint. This is because it is late and I have not seen any evidence of fault in the way the Council decided to install traffic calming measures.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mrs G complains that the Council did not properly follow up her concerns about her grandchildren's welfare in 2007. The Ombudsman will not investigate because after all this time it is unlikely an investigation would be effective or would achieve anything of significance.

The complaint

1. The complainant, whom I shall call Mrs G, complains that the Council failed to protect her grandchildren. She says that it did not properly follow up her concerns about the children and that its records are incorrect.

The Ombudsman's role and powers

2. 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'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - any possible fault has not caused injustice to the person who complained, or
 - the injustice is not significant enough to justify our involvement, or
 - it is unlikely further investigation will lead to a different outcome, or
 - we cannot achieve the outcome someone wants.

(Local Government Act 1974, section 24A(6), as amended)
3. We cannot investigate a complaint about the start of court action or what happened in court. *(Local Government Act 1974, Schedule 5/5A, paragraph 1/3, as amended)*
4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. *(Local Government Act 1974, sections 26B and 34D, as amended)*
5. The Ombudsman normally expects someone to refer the matter to the Information Commissioner if they have a complaint about data protection. However, the Ombudsman may decide to investigate if he thinks there are good reasons. *(Local Government Act 1974, section 24A(6))*

How I considered this complaint

6. I have considered information provided by Mrs G who has had the opportunity to comment on my draft decision.

What I found

7. In 2007, Mrs G told the Council that her daughter's partner had links to a man, X, convicted of sex offences who she believed could pose a threat to her grandchildren. She says that she believed that the Council would take action to protect the children.
8. Mrs G says that she later discovered that the Council had not followed up her concerns but that the files referred to another man, Y, about whom she was unaware.
9. Mrs G says that the records are inaccurate and have been used as the basis for court reports which are therefore also inaccurate. She also says that the children were exposed to avoidable risks.
10. The Council says that there were links between X and Y which it considered at the time and that it gave appropriate advice about protecting the children. Mrs G does not believe that this is the case and says that her daughter was unaware that concerns had even been raised until 2017.

Assessment

11. Mrs G's complaint is potentially very serious but, in my view, it is not one that we should investigate.
12. The complaint relates to events many years ago. Although the restrictions described in paragraph 4 do not necessarily apply as Mrs G first saw the information which concerned her much more recently, the fact that the events are historic has implications. First, it is harder to satisfactorily investigate issues from over a decade ago. Secondly, it is difficult to know what injustice any possible fault might have caused or how that could be addressed in a meaningful way. Mrs G says that the children were put at avoidable risk. The Council says it took measures to protect them. After all this time, it is not possible to say with any degree of certainty whether such measures were sufficient. However, Mrs G does not say that the children were harmed by X during the period in question and she does not say that she had concerns after 2007 that the children were at risk from X.
13. Mrs G says that there is incorrect information on the children's files and that this has led to inaccurate reports being drawn up for court. The Ombudsman cannot investigate the accuracy of any information presented to court as evidence (see paragraph 3 above). Such evidence needs to be challenged in court at the time. This potentially means that a lot of Mrs G's concerns are outside the Ombudsman's jurisdiction.
14. In addition, the accuracy of the files is more a matter for the Information Commissioner and is a matter which would be better raised by Mrs G's daughter as the files relate to her children.
15. Therefore, I am doubtful that an investigation by the Ombudsman could achieve anything of substance.

Final decision

16. I have decided that the Ombudsman should not investigate this complaint. This is because the events complained of happened too long ago to make investigation effective and it is unlikely that the Ombudsman could achieve anything significant through investigation.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: The Council followed the correct process, in line with government guidance, to decide a Blue Badge application.

The complaint

1. The complainant, who I will call Ms B, says the Council failed to properly assess her granddaughter (Ms C's) application for a Blue Badge. The Council refused Ms C's application. Ms C gave up her job, as did not feel able to continue without a Blue Badge enabling her to park close to the buildings she needed to visit. Ms C suffered severe depression and took an overdose.

The Ombudsman's role and powers

2. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
3. We may investigate complaints made on behalf of someone else if they have given their consent. (*Local Government Act 1974, section 26A(1), as amended*)
4. If we are satisfied with a council'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

5. I considered:
 - Information provided by Ms B, and discussed the complaint with her.
 - Information provided by the Council, in response to my enquiries.
 - The 'Blue Badge Scheme Local Authority Guidance (England)' issued by the Department for Transport in October 2014.
 - Responses to a draft of this statement.

What I found

Blue Badge scheme

6. The Disabled Persons' Parking Badge Scheme (Blue Badge) provides a national arrangement of on-street parking concessions for severely disabled people.

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7. The Blue Badge scheme is for people with severe mobility problems. It allows Blue Badge holders to park close to where they need to go. The scheme operates throughout the UK and is managed by local authorities, who deal with applications and issue Blue Badges.
 8. To be eligible for a Blue Badge without further assessment the applicant must be more than two years old and:
 - Receive the Higher Rate of the Mobility Component of the Disability Living Allowance; or
 - Be registered blind; or
 - Receive a War Pensioner's Mobility Supplement.
 9. To be eligible for a Blue Badge subject to further assessment the applicant must be more than two years old and:
 - Drive a vehicle regularly, have a severe disability in both arms, and be unable to operate, or have considerable difficulty in operating, all or some types of parking meter; or
 - Is unable to walk or have considerable difficulty in walking because of a permanent and substantial disability.
 10. If the applicant does not automatically qualify, the local council will need to assess eligibility. The council is likely to ask the applicant some questions and might also ask the applicant to be assessed by an independent health professional, like an occupational therapist or physiotherapist.

What happened

11. Ms C applied for a Blue Badge, she was not automatically eligible so the Council asked her to attend a mobility assessment. An Occupational Therapist (OT) completed the assessment. The applicant needs to show that because of their permanent and substantial disability, they cannot walk very far without experiencing severe difficulty. Several factors may be relevant to decide this, government guidance gives advice on what to consider.
12. Ms B confirms she told the OT about her medical condition and how she is affected. Ms B explained the day of the assessment was a good day for her, but on other days she would not have been able to attend the assessment as she cannot walk or stand on those days. Ms B explained her constant pain levels and how they are made worse by walking.
13. The guidance says an applicant may be deemed eligible if they can walk 30-80 metres without pain or breathlessness, but demonstrate very considerable difficulty in walking through a combination of other factors.
14. The OT saw Ms B walk indoors and outdoors, and on a flat surface and a slope. The OT saw Ms B walk on an uneven surface and negotiate a step. Ms B walked more than 80 metres. Ms B walked very slowly, was hesitant, and had some fatigue and discomfort. Ms B used a walking aid. Ms B showed no signs of being out of breath; she could walk and talk despite her pain.
15. The OT considered all the factors suggested in the government guidance. The OT recommended the Council did not issue a Blue Badge, because although Ms B has a permanent and substantial disability she was able to walk around 145 metres without severe difficulty.

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16. Ms B complained, and sent a photograph showing her swollen foot following the assessment. The guidance says it does not matter whether excessive pain occurs at the time of walking, or later. What counts is that it is a direct result of their attempt to walk.
 17. The Council considered the information Ms B gave, including the photograph. The Council reviewed Ms B's application for a Blue Badge, considering all information it had. The Council decided Ms B was not eligible as she could walk a considerable distance on the day of the assessment. The Council commented that on the day of the assessment Ms B used one crutch; she was prescribed two and therefore it expected her mobility would improve with the use of the second crutch. The Council invited Ms B to send any new medical information for consideration. Ms C says they sent a letter from Ms B's GP, but I have no evidence of this. The Council says it received nothing further.

Was there fault causing injustice?

18. The Ombudsman cannot decide whether Ms B is eligible for a Blue Badge, I must consider whether the Council followed the correct process to reach its decision.
19. The Council completed a mobility assessment, which was in line with government guidance. The Council considered the information Ms B provided and invited her to send any further medical evidence.
20. Ms B queries how much consideration the Council gave to her application, given it issued its decision three days after the mobility assessment. The mobility assessment would carry much weight in the decision making. Once the results of that were known, I would not expect it to take long for the Council to decide the application. The timescale is not evidence of fault.
21. As there was no fault in the Council's process, I cannot criticise its decision, even though Ms B disagrees with it.
22. The Council invited medical evidence but did not receive it. Ms B should send the Council her GP evidence and any other medical evidence she may wish to send. The Council should consider whether any new evidence changes its decision.

Final decision

23. I have completed my investigation on the basis there is no fault by the Council.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Failure to make proper contingency arrangements caused injustice to Mrs X's family, who are left with uncertainty of not knowing whether their mother's death was hastened by her fall. The Council will now apologise for the actions of the care provider Carewatch (acting on its behalf), and offer a payment to Mrs X's family to recognise their distress.

The complaint

1. Ms A (as I shall call the complainant) complains that Carewatch, the care provider commissioned by the Council, failed to visit her elderly mother (Mrs X) as stipulated on the night of 28 February 2018, having assured Ms A that the visit would go ahead as planned. Mrs X fell that night and was taken to hospital on 1 March where she died the following day.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word 'fault' to refer to these. If we are satisfied with a council'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*)
3. We have powers to investigate adult social care complaints in both Part 3 and Part 3A of the Local Government Act 1974. Part 3 covers complaints where local councils provide services themselves, or arrange or commission care services from social care providers, even if the council charges the person receiving care for the services. We can by law treat the actions of the care provider as if they were the actions of the council in those cases. (*Part 3 and Part 3A Local Government Act 1974; section 25(6) & (7) of the Act*)

How I considered this complaint

4. I considered all the written information provided by the Council, Carewatch and Ms A. Both Ms A and the Council had the opportunity to comment on an earlier draft of this statement and I took their comments into account before I reached a final decision.

What I found

5. The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 set out the fundamental standards those registered to provide care services must achieve. The Care Quality Commission (CQC) has issued guidance on how to meet the fundamental standards below which care must never fall.
6. Regulation 9 says that care must be appropriate and meet people's needs. The guidance says that "*providers must do everything reasonably practicable to make sure that people who use the service receive person-centred care and treatment that is appropriate, meets their needs and reflects their personal preferences*".
7. Regulation 18 concerns provision of staff in an emergency. The guidance says "*there should be procedures to follow in an emergency that make sure sufficient and suitable people are deployed to cover both the emergency and the routine work of the service.*"

What happened

8. Mrs X was an elderly lady living alone. She had a history of coronary heart disease. The Council arranged and funded a home care service for four calls a day to Mrs X from Carewatch.
9. At the end of February 2018 there was heavy snow.
10. On the morning of 28 February Mrs X's neighbour telephoned Ms A to say the morning carer had not arrived, and she had gone round to help Mrs X instead. The morning carer did not arrive until midday. Carewatch says its records show that the carer contacted Mrs X to tell her she would be late.
11. Ms A says due to the late morning call, she telephoned the neighbour again later that afternoon. The neighbour said she had made Mrs X some tea as the tea-time carer had not arrived. Ms A telephoned Carewatch twice in the late afternoon to ask if the night-time carer would be able to attend. She says the care provider told her there would be a night time carer attending. She says Carewatch then telephoned her again to say the carer would be late, but would be able to attend as she lived locally. Ms A told the neighbour the carer would be attending.
12. On 1 March Carewatch telephoned Ms A to say no carers would be able to visit Mrs X that day or possibly on 2 March. Ms A says she was telephoning neighbours to ask someone to visit her mother when she received a call to say Mrs X had fallen the previous evening, spent the night on the floor and had been taken to hospital. Sadly Mrs X died in hospital the following day.
13. Ms A complained to Carewatch. She said as she had been assured twice on 28 February that a carer would attend her mother that night, she did not make different arrangements for someone to call round. She said a manager had told her she thought the Council had taken over the service in view of the bad weather conditions.
14. Carewatch replied to Ms A. The branch manager said the night-time worker had told the office she would be able to attend the late call but the weather situation deteriorated during the day and the area was only accessible by 4x4 vehicles. He said the on-call manager had tried to telephone Mrs X to let her know but the line was engaged. He said the on-call manager contacted the Council to say the roads to some service users (including Mrs X) were inaccessible. He said the on-call manager said the Council confirmed its own team would deliver care to the

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- areas which were hard to reach, including to Mrs X. The branch manager said he had evidence of the phone call but not its contents (which were not recorded).
15. The branch manager said Carewatch was now taking action to ensure that next of kin was contacted if they could not contact the service user, and that agreements with the Council were followed by email confirmation.
 16. Ms A replied to Carewatch that there was nothing in the response which reassured her that what had happened to her mother might not recur. She said she could not see any suggestion which would ensure that the care would be delivered as planned.
 17. The Council says, *"It is a standard requirement for this type of Contract that providers have business continuity and contingency arrangements in place to cover events such as this. The complaint response letter from Carewatch confirms there was such a plan in place and activated at the time, as a result of the severe weather.....All regulated providers are also required to comply with CQC regulations and requirements. These include requirements to provide safe care and to ensure there are procedures to follow in an emergency to ensure sufficient, suitable people are able to cover the work of the service."*
 18. The Council also says that where providers know they cannot deliver services and this may result in risk to the service user, it would be expected that they contact the Council to make the Council aware and discuss the risks and contingencies. It says the first record of contact it has from Carewatch was on 1 March, not 28 February as the care provider says. It has no record that anyone from the Council spoke to Carewatch on 28 February confirming the Council would deliver care instead. It says immediate enquiries from a duty social worker about Mrs X's welfare when the care provider contacted it on 1 March found she had already fallen and been taken to hospital.
 19. Carewatch no longer works in the area.

Analysis

20. Carewatch (acting on behalf of the Council) failed to provide the care as stipulated and left a vulnerable elderly service user without care. That was fault, and a breach of the regulations. That was compounded by the assurances it gave to Ms A that it *could* provide care that night: had she not been assured of that, Ms A would have made arrangements for a neighbour to attend instead. It was fault for the care provider to fail to give the right information.
21. Carewatch says it was assured by the Council that an in-house team would deliver care instead. The Council has no record of a call from Carewatch that day at all.
22. The Council rightly says that care providers are required to comply with the relevant regulations in terms of providing emergency care. It did not do so however, nor did it make any plans for care to be provided by another body, nor did it notify Ms A that it could not provide care.
23. The injustice caused to Ms A and her family is the uncertainty of not knowing whether Mrs X would have fallen that evening and subsequently died if Carewatch had taken the right action.
24. As the Council arranged Mrs X's care through Carewatch, it remains responsible for the actions of the care provider.

Agreed action

- 25. Within one month of my final decision the Council will apologise to Ms A for the distress caused by the actions of the care provider;
- 26. Within one month of my final decision, the Council will offer a payment of £1000 to Ms A to recognise the distress caused by the failures of the care provider it commissioned.

Final decision

- 27. There was fault on the part of the care provider acting on behalf of the Council, which caused injustice to Ms A.

Investigator's decision on behalf of the Ombudsman

The Ombudsman's final decision

Summary: Mr P complains the Council has not provided the goods and services that his son, Q, requires. Mr P is responsible for providing Q with those services as Q is being electively home educated. There is no evidence of Council fault.

The complaint

1. The complainant, whom I shall call Mr P, complains the Council has failed to provide services that his child, Q, needs. He also says the Education, Health and Care Plan (EHCP) Reviewing Officer made groundless complaints about him and his wife and their care of Q and has not issued a revised Education, Health and Care Plan (EHCP) for Q even though the current EHCP is out of date.

The Ombudsman's role and powers

2. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
3. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we would find fault, or
 - it is unlikely we could add to any previous investigation by the Council, or
 - it is unlikely further investigation will lead to a different outcome, or
 - we cannot achieve the outcome someone wants.(*Local Government Act 1974, section 24A(6), as amended*)
4. When considering complaints, if there is a conflict of evidence, we make findings based on the balance of probabilities. This means that we will weigh up the available relevant evidence and base our findings on what we think was more likely to have happened.
5. SEND is a tribunal that considers special educational needs. (*The Special Educational Needs and Disability Tribunal ('SEND')*)
6. If we are satisfied with a council'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

7. I considered the information sent by Mr P and I spoke to him, and Q's mother, on the telephone. I have sent a copy of my draft decision to Mr P and the Council and will take any comments I receive into account before reaching a decision.

What I found

Services for Q

8. Mr P complains the Council failed to provide services to his child, Q, which were specified in his Education, Health and Care Plan. He says this meant Q was not receiving hydrotherapy or physiotherapy or any other goods and services he needed.
9. Mr P is electively home educating Q. He says Q has never been registered at a school. The family went to SEND wanting a placement for him at an independent special school. SEND thought another provision could meet his needs. Mr P was unhappy because he said the school SEND ordered had no hoists or any means to look after Q. He says that after this the family became aware of an email written by a Council officer saying; 'don't tell the parents they are able to appeal'.
10. Mr P could have told the school he was intending to send Q. He could have asked it to tell him when it had the services in place that Q needed and, when it did not do so (if it did not) Mr P could have returned to SEND. It seems that because Mr P did not want Q to attend the school ordered by tribunal, he did not do this. There is no evidence of Council fault. Mr P had the right to appeal if he did not agree with SEND's findings – he did not need the Council to tell him to appeal or not.
11. Because Mr P is electively home educating Q, he is responsible for providing services to Q – including therapy. He needs to approach his GP and ask for these services and follow the NHS complaints process if they are not provided.

Complaints raised by the EHCP Reviewing Officer

12. Mr P also complained that the EHCP Reviewing Officer had 'made several unfounded allegations about misusing funds, missing important appointments and denying access to (the child, and placing) incorrect information in (the) referral'. Although I acknowledge it must have been extremely challenging, when the family was already under a great deal of pressure, we would not criticise Council officers that expressed concerns about a child's care and then investigated them appropriately. Mr P says following investigation the family was completely exonerated – that is the process that should be followed. I cannot achieve more for Mr P by investigating that point further.

Amendments to Q's EHCP

13. Mr P is unhappy that amendments to Q's EHCP have taken a long time. He felt the Council would offer improved services if it fully assessed Q's needs. Given Mr P is responsible for providing Q with services, investigating this will not achieve the outcome Mr P wants. I am not investigating that part of his complaint..

Final decision

14. No fault.

Investigator's draft decision on behalf of the Ombudsman

The Ombudsman's decision

Summary: Mr X complains about the Council's decision to refuse his wife a blue badge. The Ombudsman found fault because the Council failed to follow its own guidance. As a result, Mrs X has been left uncertain about her eligibility for a blue badge. The Council has agreed to carry out a mobility assessment of Mrs X and arrange training for officers dealing with blue badge applications. It has also agreed to apologise to Mr and Mrs X and pay them £100 to recognise the impact on them because of its failures.

The complaint

1. The complainant, Mr X, complains the Council has not issued his wife, Mrs X, with a blue badge. He also complains the Council has not returned the photograph or postal order which were submitted with the application.

The Ombudsman's role and powers

2. 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*)
3. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. If we are satisfied with a council'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

5. I have considered the complaint made by Mr X and discussed the complaint with him.
6. I considered the Council's comments about the complaint and the documents it provided in response to my enquiries.
7. I gave Mr X and the Council an opportunity to comment on my draft decision and I considered their responses.

What I found

What should have happened?

8. Local authorities are responsible for the day to day administration and enforcement of the blue badge scheme. Local authorities must ensure they only issue blue badges to residents who satisfy one or more of the eligibility criteria. The government has issued 'The Blue Badge scheme local authority guidance (England)' to help local authorities manage the scheme.
9. Some people are automatically entitled to a blue badge (without further assessment). This includes people who receive the Higher Rate of the Mobility Component of the Disability Living Allowance.
10. Where further assessment is required, a blue badge can only be issued to an adult who:
 - Drives a vehicle regularly, has a severe disability in both arms and is unable to operate, or has considerable difficulty in operating, all or some types of parking meter; or
 - Has a permanent and substantial disability that causes inability to walk or very considerable difficulty in walking. Applicants will need to demonstrate that their ability to walk is affected to the extent that they would be unable to access goods and services unless allowed to park close to shops, public buildings and other facilities.
11. The guidance says that if the local authority cannot make a clear and robust decision on eligibility based on the application, it should refer an applicant for an independent mobility assessment.
12. The guidance sets out several factors that are relevant in deciding whether an applicant meets the criteria for a badge:
 - Excessive pain reported by the applicant when walking, or because of the effort of walking;
 - Any breathlessness reported by the applicant when walking, or because of the effort of walking;
 - The distance an applicant can walk without excessive pain or breathlessness, considering the environment the individual usually walks;
 - The speed at which they can walk;
 - The length of time that an applicant can walk for;
 - The manner in which the applicant walks;
 - An applicant's use of walking aids;
 - The applicant's outdoor walking ability; and
 - Whether the effort of walking presents a danger to the applicant's life, or would be likely to lead to a serious decline in their health.
13. The Council's 'Blue Badge Scheme Staff Guidance' says, "If the application has not been completed properly or the appropriate evidence is not returned, staff should return the application along with a template letter, requesting the required information."
14. The Council's own guidance also says, "Staff should arrange a mobility assessment for anyone who appeals against the decision not to award a badge, if the applicant has not already had one."

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15. The regulations governing the blue badge scheme allow authorities to charge a fee on the issue of a badge, which cannot exceed £10.

What did happen?

16. Mrs X applied for a blue badge. She included a postal order for the £10 fee and a photograph.
17. In her application, she ticked the box to show she received the Higher Rate of the Mobility Component of the Disability Living Allowance.
18. Mrs X completed some other sections of the application form. In those sections, she said she could walk for “500 yards with difficulty”. She also said she struggles with longer distances or hills; cannot walk around the supermarket to do her own shopping; and cannot walk or use public transport for some of her local trips.
19. Mrs X described the way she walked as “poor” and said she could not walk outside without help from another person. She said she used a walking stick and would shortly begin using a wheelchair. Mrs X said she had to stop for breath while walking at her own pace on level ground.
20. On a scale of zero to ten where ten was “the worst pain imaginable”, Mrs X scored her experience of pain while not walking at five. She scored her experience of pain while walking at zero.
21. Mrs X named a nearby place she could comfortably walk to from home. By my estimates this destination was within 250 metres of her home. She stated it took her “10 minutes plus” to cover this distance, indicating a walking speed of less than 25 metres per minute.
22. Mrs X did not complete the mandatory declarations on the application or sign and date the form.
23. The Council received Mrs X’s application and assessed it. Not all completed areas of the application form have been scored. The Council has not provided any explanation of its scoring system.
24. The Council wrote to Mrs X in July 2018 to advise her that her application was unsuccessful. The reason given was because her walking difficulties did not appear to be severe enough to qualify for a badge.
25. Mrs X appealed the decision. I asked for copies of the letters Mrs X sent to the Council but the Council could not find them in its records. Mrs X provided the Council with a copy of a referral for a wheelchair assessment completed in July 2018, which included some extra details about her health needs.
26. The Council wrote to Mrs X again advising the information she had provided was not enough to allow it to reverse its decision. The Council did not offer Mrs X a mobility assessment. The Council says it returned the postal order and fee with this letter.
27. Mr and Mrs X moved to a new house around this time.
28. Mrs X contacted the Council in September 2018 about her application. The Council wrote to her at her new address advising it would not be changing its decision.
29. The letter, postal order and photograph were returned to the Council undelivered in October 2018 and were placed in a safe.
30. The Council says it has tried to confirm Mrs X’s new address but has not received the proof it needed to enable it to return the postal order and photograph.

Analysis

31. Mrs X did not present any evidence confirming her entitlement to the Higher Rate of the Mobility Component of the Disability Living Allowance. If she had, she would have been eligible for a blue badge without further assessment.
32. Given Mrs X also did not sign or date the form or complete any of the mandatory declarations, the Council should have followed its own guidance and issued a letter asking for the missing information and evidence. This would have provided the Council with an opportunity to clarify if Mrs X received the correct benefits to qualify for a badge without further assessment. I have not seen any evidence the Council did this, and this was fault.
33. The information provided within the application is contradictory in places and does not lend itself to making a clear and robust decision according to the government's guidance. The Council should have referred Mrs X for a mobility assessment. It failed to do so, and this was fault.
34. The Council has failed to comply with its own guidance when it did not offer a mobility assessment in response to any of Mrs X's appeals. This was fault.
35. Because of the information Mrs X provided about her health needs as part of her appeal, the Council should have considered whether she needed more support to complete her application effectively. This would be in line with the government's guidance on assisted completion of applications for blue badges. The Council would also be meeting its duties under the Equality Act 2010.
36. The Council says it has not returned the postal order and photograph because Mrs X has not provided proof of her address. However, it wrote to her about her blue badge application at her new address. Either the Council was satisfied that it had the correct address and therefore should have returned the postal order and photograph to the new address; or it should not have written to Mrs X about her application without receiving proof of her new address.
37. Mrs X remains without a blue badge and she and her husband have gone to the time and trouble of putting in appeals and making their complaint. There is uncertainty about whether she would have received a badge if the Council had made further enquiries about her benefit entitlement, or referred her for an independent mobility assessment as it should have done.

Agreed action

38. The Council expressed reservations about the findings of this investigation. However, it has agreed to undertake the following actions within four weeks of this decision:
 - Carry out an independent mobility assessment and write to me and Mrs X with the result of this assessment.
 - Apologise for the faults identified and pay £100 to Mr and Mrs X.
 - Reimburse Mr and Mrs X £10 for the cost of the expired postal order.
39. The Council also agreed to arrange training for relevant officers to ensure they are complying with the Council's own guidance when considering blue badge applications. It will complete this within eight weeks of this decision.

Final decision

40. For the reasons explained in the Analysis section, I have completed my investigation and uphold Mr X's complaint. I am satisfied the actions the Council has agreed to take are sufficient to remedy the injustice caused.

Investigator's decision on behalf of the Ombudsman