

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

Investigation into complaints against

London Borough of Harrow

**(reference numbers: 19 002 266, 19 003 030,
19 004 141, 19 005 425, 19 008 930, 19 011 116,
19 011 910, 19 013 358)**

10 September 2020

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr B	The complainant
Mr C	The complainant
Mr D	The complainant
Miss E	The complainant
Mrs F	The complainant
Mr G	The complainant
Mrs H	The complainant
Mr I	The complainant

Report summary

Adult social care

The complainants complain about the Council contractor's (Access Independent) decision to refuse their applications for Blue Badges or Freedom Passes.

Finding

Fault found causing injustice and recommendations made.

Recommendations

We recommend that, within three months of the date of this report, the Council should:

- offer new assessments to Mr D, Miss E, Mr G, Mrs H and Mr I;
- remind 'paper-stage' assessors of the requirement to only refuse applicants that are clearly ineligible. If an application form is not fully completed, this needs analysing in any decision to refuse an application;
- remind all assessors of the importance of having a full record that allows a third-party reader – the applicant or a reviewer – to understand the reasons for a decision. For example, fuller explanations of why descriptors are chosen; especially when they conflict with other evidence;
- remind assessors that the Blue Badge Scheme Local Authority Guidance (England) (the Guidance) says explanations should be clear. So information sent to applicants should avoid jargon and acronyms. Any handwritten documents should be legible;
- remind assessors that it is especially important to provide reasoning when they have observed a walking speed of less than 40 metres a minute and refused the application. This is because the Guidance notes this, alone, likely indicates very considerable difficulty in walking;
- draw up an action plan that will clearly specify when it will implement the recommended changes to the assessment process and decision letters, for paper, assessment and appeal stage decisions.

We welcome that the Council has accepted our recommendations.

The complaint

1. The complainants complain about the Council contractor's (Access Independent) decision to refuse their applications for Blue Badges or Freedom Passes.

Legal and administrative background

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)

How we considered this complaint

4. We produced this report after examining relevant documents and discussing the issues with the complainants. We sent a draft report to the complainants and the Council and invited comments. The comments received were taken into account before the report was finalised.

What we found

The Council's administration of its transport schemes

5. The Council is responsible for the assessment of eligibility for disabled person's transport schemes. These include Blue Badges, Freedom Passes and Taxicards. *Harrow Council Concessionary Travel Eligibility Criteria Statement* advises it has a mobility assessment contract with an independent company of health professionals.
6. That company is Access Independent (AI). It administers all aspects of the application, assessment, decision and appeal process. The Council remains responsible and accountable for the eligibility criteria and assessments. It holds quarterly meetings with AI.
7. The Council's *Eligibility Criteria Statement* explains the Council/AI uses a "step-by-step approach" in assessing applications.
 - Stage 1 Paper Assessment
 - Stage 2 Further Information
 - Stage 3 Clinical Assessment
 - Stage 4 Appeal

Blue badges

8. *The Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations* set out which people are entitled to disabled parking (Blue) Badges.

Some of these people are automatically eligible. Others are eligible subject to further assessment. These are people who:

- have a severe disability in both upper limbs and cannot turn (by hand) the steering wheel of a motor vehicle even if that wheel is fitted with a turning knob; or
 - have a permanent and substantial disability which causes inability to walk, or very considerable difficulty in walking.
9. All the Blue Badge complaints considered in this report are about assessments under the “eligible subject to further assessment” rules.
 10. Following amendments to the Regulations in 2011, a person’s eligibility should be confirmed by an independent mobility assessor, unless it is self-evident that the applicant is clearly eligible or ineligible for a badge.
 11. The Department for Transport’s *Blue Badge Scheme Local Authority Guidance (England)* is not statutory guidance, but the Council follows it and its *Eligibility Criteria Statement* includes many of its recommendations. At the time these complaints relate to, the relevant Guidance was the 2014 version.
 12. The Guidance says that applicants:
 - who can walk more than 80 metres, and do not demonstrate very considerable difficulty in walking through any other factors, would not be deemed as eligible;
 - may be eligible if they can walk 30 to 80 metres without pain or breathlessness, but demonstrate very considerable difficulty in walking through a combination of other factors such as speed and, or, manner of walking;
 - who cannot walk 40 metres in a minute (including stops) are walking at an extremely slow pace which is likely to make walking very difficult, when considered in isolation.
 13. Having a certain medical condition does not in itself qualify an applicant for a badge. Rather it is the effect of the condition or disability on the applicant’s ability to walk that is assessed.

Changes to the qualifying criteria

14. On 1 September 2019 the rules for who can qualify for a Blue Badge changed. The eligibility criteria expanded to include people who cannot walk, as part of a journey, without considerable psychological distress, or the risk of serious harm, due to “hidden disabilities”. The Department of Transport had announced its intention to change the rules in the summer of 2018. It published a new version of the *Blue Badge Scheme Local Authority Guidance* on 14 June 2019.

Disabled person’s Freedom Pass

15. London Councils operate a disabled person’s Freedom Pass for people with certain disabilities. *Harrow Council Concessionary Travel Eligibility Criteria Statement* notes the qualifying criteria includes people who would be refused a driving licence, for reasons set out in the Road Traffic Act 1988. One of the groups of people who would be refused, are those with a severe mental disorder. The Statement notes that people who are unsafe to drive because they persistently misuse drugs or alcohol, are excluded from that Freedom Pass qualifying route.
16. The Statement notes:

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- it would be burdensome to expect all applicants to have applied for a driving licence. If they have one of the disabilities listed as qualifying, the Council can be confident an applicant would be refused if they applied; and
 - it would accept mental health evidence from a psychiatrist/consultant that confirmed the applicant's inability to hold a driving licence.

Background

17. We have received complaints about the Council's decisions on applications for Blue Badges and Freedom Passes. Between 2016 and 2018 we upheld eight complaints about these issues. This is significantly higher than comparable councils – the average number of upheld complaints for other outer London boroughs was one or two complaints for the same period.
18. We have continued to receive a disproportionately large number of complaints about the Council's administration of its transport schemes. This pattern of repeated concerns is one of the reasons that we have decided to issue this public report. The complaints are around some key themes.

No detailed explanation for refusal in Blue Badge decision letters, as recommended in the Guidance

19. The Guidance says:

“The DfT strongly recommends that every applicant who is refused a badge should be given a detailed explanation of the grounds for refusal. It is not sufficient to simply state that the applicant did not meet the eligibility criteria. The Local Government Ombudsman expects authorities to provide a clear explanation of the reasons why an application has been refused in the decision letter.”
20. In earlier decisions we found fault with AI's decision letters. These have a series of standard paragraphs giving general advice about the qualifying criteria for Blue Badges. They do not have any information specific to the individual application. In 2018 we recommended the Council reminded its mobility assessors of the need to tailor decision letters to state why the applicants did not meet the eligibility criteria.
21. The Council says that, now:

“It is Access Independent policy to include a copy of the last page of the assessment form detailing the assessor[s] hand written reasoning for the decision, until such time as a digital solution can be implemented to pull through typed reasoning data onto decision letters. This provides a reasonable level of detail into the assessor reason for declining an individual application/appeal...”
22. Mr B, Mr C and Mrs H had letters that referred to an attached document. This was the last page of AI's assessment record, handwritten around the time of an assessment. The last page includes a summary. These summaries often include acronyms such as “SOB”, “PMH” “MSK” and so on. There is no explanation what these mean.
23. For applications refused at the paper stage (not carried out by a healthcare professional), AI continues to send out only the generic letter.
24. In one of its responses to our enquiries, the Council explained why generic reasons in desktop decisions did not disadvantage an applicant:

“While we appreciate a more customised decision letter from the desktop process is desirable, we cannot see any way in which the absence of such could disadvantage the applicant in the subsequent face to face assessment as the nature of the assessment is such that the applicant is assessed on the level of ability they demonstrate and report on the day.”

25. The Council says:

“...decision letters produced at the desk based stage are more generic and are only specific to the criteria applied under rather than the merits of the individual’s case, and we are actively implementing solutions to rectify this currently.”

26. As a recommendation at draft decision in a recent complaint where we found fault, but no significant injustice, we asked the Council to provide a timescale for when it expected to make changes to its paper stage decision letters. It responded to advise:

“Harrow cannot commit to a timescale for changing contractors processes as AI and other such providers in this niche market are generally small SME’s (small businesses) who cannot easily change processes without major investment or an opportunity to increase unit costs to cover additional administrative costs. As such Harrow will endeavour to change processes over the next 18 months as and when contracts allow.”

Analysis

27. Sending out the last page of the assessment document is an improvement on historic practice, where decision letters did not have any information specific to the applicant’s circumstances. But the fact the documents AI is sending out are handwritten and often contain acronyms, abbreviations and jargon means they still fall short of the guidance that explanations should be clear.

28. And AI is not sending out any explanation (apart from some standard paragraphs) in decisions it refuses at its paper screening stages. The Council has given its view about why this does not disadvantage applicants. But this ignores the following.

- The Guidance does not make any distinction about which decisions should get a detailed explanation.
- We have seen at least one complaint where the applicant did not get a detailed response with the appeal.
- Some applicants might not appeal without detailed reasons.

29. The Council says it cannot commit to when it will make changes, due to the pressure this would put on AI. But any limitations arising from the Council’s choice of third party contractor are not a legitimate reason to fail to follow guidance.

30. The Guidance says decision letters should give clear detailed reasons why an applicant has been refused a badge. The Council failed to do this. That was fault.

The paper stage assessment for Blue Badges

31. The national Guidance:

- says desk-based assessments have a role as a filtering mechanism to identify applicants who are clearly eligible/ineligible for a badge;
- says: *“Local authorities should refer an applicant for an independent mobility assessment if they are unable to make a clear and robust decision on eligibility*

using cross-checking or desk-based assessment, i.e. if eligibility is not self-evident”.

- recommends using a scoring system so that administrative staff members do not make subjective decisions.

32. The Council says:

“Harrow council have an established scoring mechanism as explained in their eligibility policy, used at the desk top stage to robustly determine if an applicant is likely to be eligible or not and to offer a clinic appointment with an expert assessor where eligibility is unclear.”

33. As a result of an earlier Ombudsman decision, a document that used to be called “initial screening” is now called: *“Harrow Concessionary Travel Desktop Data Collection Tool”*. This document has a set of statements that assessors match information from the application with. The statements have points attached. The form says assessors should decline an application that scores 0 to 16 points, refer for assessments applicants who score 17 to 19 points. And approve applications that get more than 20 points.
34. The Council advises of around 2,087 applicants AI received in 2018/19, it declined 257 at this stage.
35. Of those declined applications, it advised 36 appealed, of which 13 were upheld, and 23 were declined.

Mr D’s complaint

36. Mr D is 82 and gets attendance allowance. On his Blue Badge application form he said he was troubled by shortness of breath, had a heavy limp, used a walking stick, had balance problems and had a fall three weeks before. He estimated he could walk 100 metres before he felt severe discomfort. But he left the part of the application form asking about how long it took him to walk that distance blank.
37. On screening, AI’s administrator scored Mr D 16 points. So it declined the application. There was no analysis of the fact Mr D had not estimated how fast he could walk. And the decision letter to Mr D only provided general information about eligibility.

Analysis

38. Mr D did not include key information about his walking speed on his application form. The assessor did not take account of this in making her decision. At a later assessment, Mr D was given a descriptor for a “very slow” walking speed. Our view is without that information, the assessment could not make a finding Mr D was “clearly ineligible”. That was fault.

The walking route and its measurement and the correct test for assessing entitlement for Blue Badges

39. The Guidance says the assessor should cross reference all the information with their own observations. They should consider each aspect of walking, *“first in isolation, and then in combination, to reach a decision as to whether they combine to mean the applicant experiences very considerable difficulty in walking.”*
40. AI’s assessment form sets out several categories under which each applicant’s walking ability is assessed. It uses a “scoring system” to decide eligibility, although this is not explained in the decision letter.

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41. The categories the Council considers when assessing applicants are broadly similar to the suggested categories in the government guidance. The assessment has seven sets of activities related to walking. Each question has five possible answers. The answers are scored from zero to five, depending on the assessed level of difficulty within each category. An applicant needs at least 24 points to qualify for a Blue Badge or Taxicard. And at least 18 points to qualify for a Freedom Pass.

Mr B's complaint

42. Mr B applied for a renewal of his Blue Badge. On his application form he listed a range of medications. These include prescription painkillers. He also said he had had several falls in the 12 months before the assessment.
43. He advised the assessor on the day he was experiencing pain (10 out of 10) in his neck, shoulders, knees and calves when walking.
44. The assessor:
- crossed out an original distance of 80 metres, changing it to 85 metres, which took Mr B two minutes and five seconds to walk;
 - chose the three point descriptor that they had observed Mr B walking continuously up to 80 metres with considerable signs of distress. The four point descriptor is the same distance with high signs of distress, using walking aids/escort. For his appeal, Mr B produced a signed statement from his carer reporting he held her arm and he also used a walking stick. The carer also said Mr B stopped for a rest;
 - chose the descriptor for “very slow” walking speed – 40 metres a minute (four points). The five point descriptor is for applicants who can walk less than 40 metres a minute;
 - chose a descriptor for some pain, but can keep pace and walk and talk. This notes the person might report taking non-prescribed pain relief. The next descriptor is a higher degree of pain, other observed behaviours and medical evidence of prescribed pain relief;
 - scored Mr B 21 points, so he did not qualify for a Blue Badge;
 - recorded in the decision summary that Mr B walked 80 metres with “mild-moderate difficulty only”. It notes “light” use of aid and the arm of his escort. No rest.
45. In response to our enquiries the Council:
- noted AI's assessor's view that 85 metres was more correct. They had based their scoring on observations. And the scoring was well justified;
 - advised it was happy for Mr B to have a new assessment, which it had arranged.

Analysis

46. The assessment decision needed fuller reasoning. The Guidance advises assessors to cross reference other information with their own observations. The record does not do this. It needed to note:
- the fact Mr B reported he took prescription medication and why the assessor felt the descriptor chosen was better than the one that matched prescription medication; and

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- Mr B's reported history of falls in its analysis.

This was fault.

Mr D's complaint

47. AI assessed Mr D at the appeal stage. The assessor recorded Mr D walked 73 metres in three minutes 21 seconds and awarded him five points for the descriptor about speed. In total the assessor awarded Mr D 20 points. This meant he did not qualify for a Blue Badge.
48. After the assessment, Mr D's son measured the route with a Councillor who emailed us about the route:

"The first part was from the staircase opposite the ground floor toilets, to a tree in a concrete planter in the forecourt. This distance was 41.2m. The second part was from the tree to a car in the front visitors' car park. This distance was 23m. The total was therefore 64.2m."
49. In response to our enquiries, the Council advised the assessor measured 53 metres and 20 metres – a total of 73 metres. It says Mr D's representative possibly measured from a different place. The Council says that, even using the alternative measurements, Mr D would not have qualified for a Blue Badge. It notes that there is no set distance and eligibility was up to the assessor to use knowledge and experience when scoring the assessment.
50. The decision summary noted the distance walked, and slow pace, signs of *"mild effort fatigue, uneven gait, mild shortness of breath on effort"*.
51. In its response to our enquiries, the Council advised:

"...pace is rarely considered in isolation during a blue badge assessment, purely for the reason that rather than being a subjective assessment reliant on the assessor's knowledge and experience of mobility, it is an objective recording for which it is difficult to prevent simulation. This is not to in anyway suggest simulation occurred in this instance, and you will note the assessor scored and attributed their very slow pace entirely, but to simply explain why it cannot normally be considered in isolation as a qualifying factor and must be considered as part of a wider holistic assessment made up of other observations regarding their mobility. The assessor provides a full and detailed explanation and reasoning for their decision on the end of the assessment report."

Analysis

52. There is a lack of detail about how AI assessed certain features of Mr D's mobility. The guidance says that a person *"may be considered eligible if they ... demonstrate very considerable difficulty in walking"*. It then goes on to say that a pace of less than 40 metres a minute, or 0.67 metres a second, *"is an extremely slow pace which is likely to make walking very difficult when considered in isolation"*.
53. It took Mr D three minutes 21 seconds to walk the disputed distance. This is a speed of around 22 or 19 metres a minute, depending on which distance measurement is preferred. We note the Council's comments about the risk of "simulation". But the Guidance notes that a speed of less than 40 metres a minute *likely* makes walking very difficult, when considered in isolation.

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54. So we would have expected to see an analysis of why Mr D's time to walk 40 metres, in isolation, did not qualify for a Blue Badge. We note the assessor awarded Mr D the maximum number of points for speed.
 55. The assessor observed Mr D walking much slower than the top end of a "very slow" speed. This raises the possibility that, if Mr D had tried to walk faster – perhaps doubling his speed to around 40 metres a minute – this might have affected other factors like shortness of breath, pain or fatigue.
 56. And, given the speed observed, the extra time it would take to walk the disputed distance is possibly significant.
 57. To consider whether the Council's decision was properly made, we must be able to work out how it was made. In Mr D's case, we cannot, with any confidence, do so. The lack of an adequate explanation was fault.

Mrs H's complaint

58. Mrs H had been receiving a Blue Badge for nine years. In May she attended an assessment for renewing her badge.
59. The assessor recorded Mrs H could walk 70 metres. And that this took four minutes, including rest stops. He awarded Mrs H three points for walking up to 80 metres with considerable sign of distress. And four points for walking at a very slow speed of 40 metres a minute.
60. The descriptor chosen for breathing is the one for mild signs of breathlessness, no rest needed and the applicant kept pace with the assessor.
61. The total score was 22 points. So Mrs H did not qualify.
62. The decision letter had generic information and referred to the assessment summary. This noted:
 - observed walking 70 metres at a very slow speed with the aid of two walking sticks;
 - no severe signs of pain noted;
 - walked in a confident manner;
 - mild signs of shortness of breath, but could walk and talk; and
 - no balance issues or reported falls.
63. With her appeal, Mrs H enclosed a letter from her GP. This said Mrs H had osteoarthritis, a history of abdominal surgery and hernias. It advised she needed two walking sticks.

Analysis

64. Al's observed speed for Mrs H is around 17.5 metres a minute. Yet the assessor chose the descriptor for walking 40 metres a minute. We would have expected an explanation why this descriptor, rather than less than 40 metres a minute, was chosen.
65. The Guidance says that a person "*may be considered eligible if they ... demonstrate very considerable difficulty in walking*". It then goes on to say that a pace of less than 40 metres a minute, or 0.67 metres a second, "*is an extremely slow pace which is likely to make walking very difficult when considered in isolation*". So we would have expected to see an analysis of why the assessor could not award Mrs H a Blue Badge on speed alone.

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66. And Mrs H’s observed speed was much slower than the top end of a “very slow” speed. This raises the possibility that if Mrs H had tried to walk faster – perhaps doubling her speed to be around 40 metres a minute – this might have affected other factors like shortness of breath, pain or fatigue. Our view is the lack of further explanation casts doubt on whether the decision was properly made.

Mr I’s complaint

67. The Council issued Mr I with a Blue Badge in 2009. It renewed this award in 2012 and 2015. Mr I applied to renew his badge in 2018. AI assessed the application at its desktop stage and refused the application in June. Mr I said he appealed and this was refused.
68. In March 2019 Mr I applied again. He attended an assessment. The assessor gave Mr I 19 points from the assessment, including four points for speed of walking, which is the descriptor for very slow speed (40 metres a minute). But the assessor recorded Mr I as having walked 78 metres in two minutes 18 seconds. This equates to a speed of around 34 metres a minute. In the summary, the assessor notes Mr I walked alongside the OT at a “slow, steady pace”.
69. In May Mr I appealed. The July appeal decision letter had general information, but no explanation of the reasons for the decision on Mr I’s application. The letter did however have attached a typed document setting out the clinical reasoning.

Analysis

70. We are unclear from the above why the assessor did not assess Mr I as meeting the five-point descriptor for speed. There is no explanation of why they favoured the lower category.
71. It is not clear to what degree this has caused Mr I an injustice. His total score was 19 points. The maximum score for walking speed is five points. So, even if he should have been put in the slowest category, his total would still have only been 20. The qualifying score for a Blue Badge, at the assessment, is 24 points. So he was still some way short of this threshold.
72. But our view is the assessment decision needed fuller reasoning why the assessor’s view was the speed was not in itself evidence of very significant difficulty walking.
73. It is possible the complainant’s walking speed alone is sufficient to qualify him for a Blue Badge under the guidance. The fault in the assessment is significant enough to cast doubt on whether the decision was properly made.

Advice about new applications and the “hidden disabilities” changes to the qualifying criteria for Blue Badges

74. In an earlier complaint ([18002622](#)) our view was the Council was at fault by not allowing an applicant to make a new application, in any circumstances, for nine months after AI had made a decision. The Council changed its *Harrow Council Concessionary Travel Eligibility Criteria Statement*. The current version (July 2019) says:

“Where an application has been refused, either initially or on appeal, the applicant cannot reapply within 9 months of the refusal unless, and only when, the applicant can satisfactorily demonstrate that their mobility has deteriorated to a point where they would now meet the eligibility criteria. If appropriate, the applicant will then be invited to reapply and that application will be fully assessed.”

75. But the decision and appeal letters AI sent to the complainants said:

“If your circumstances change you are able to re-apply for a Blue Badge 9 months from the date of this letter by completing a new application.”

So the advice AI’s letters gave applicants differed from the Council’s policy. That was fault.

Mr C’s complaint

76. AI’s assessment of Mr C’s Blue Badge application noted:

- Mr C advised he no longer used public transport, as he was too anxious. So he no longer used a Freedom Pass; and
- Mr C got 10 points in the personal independence payment (a disability benefit) assessment, for having problems in planning a journey.

77. In response to our enquiries, the Council advised:

“As for the new criteria, at the time of the assessment and the first declined letter, the new nonvisible “Hidden Disabilities” criteria were not clarified [see paragraph 14], and all the guidance issued at that time was that the new criteria would be “a danger to themselves and others” and undertaking a journey caused “Considerable psychological distress”. As with other applicants at that time we made a judgement if this person was likely to meet the new criteria if they applied under it, and in this case, it seemed unlikely that Mr [C] would be any more likely to be awarded a Blue Badge under the new criteria. Although he was listed in his application form as having epilepsy and difficulty communicating, he was also listed as having no mental health problems and the application was largely based on his inability to walk.”

78. Mr C has advised us that AI has, since his complaint, offered him a new assessment, where it awarded him a new badge. This was due to a deterioration in his physical walking ability.

Analysis

79. There is some indication in the information AI had about Mr C’s circumstances (see paragraph 76) that suggested he might qualify under the new “hidden disability” rules. The Council says it made a judgement it was unlikely Mr C would qualify under the new rules. But it has not provided any records of the judgement. Our view is the lack of a record is fault. And this means we cannot assess how the Council arrived at its view.

Miss E’s complaint

80. Since at least October 2016, Miss E has had a Freedom Pass, because she would be refused a driving licence, due to her mental ill-health.

81. In April 2019 Miss E re-applied for a Freedom Pass. She also wanted the Council to award her a Blue Badge or Taxicard. She says she has problems with mobility, due to fatigue and confusion, when she is ill. In support of her application, Miss E sent in a letter from a mental health nurse which advised about her mental health problems.

82. AI assessed Miss E’s application using its desktop process. On 2 May it wrote to her refusing her application for a Blue Badge and Taxicard. The letter has some general information about the qualifying criteria, but does not mention any specific reasons why Miss E did not qualify. It advised she needed to wait nine months

before she could reapply; and then only if her circumstances changed. Miss E says AI did renew her Freedom Pass.

83. Miss E appealed the refusal of the Blue Badge and Taxicard. AI assessed her walking mobility and awarded her 10 points. The assessment form notes that Miss E had mental health issues, but *“these are not considered under current criteria”*.
84. On 1 July AI wrote to Miss E refusing her appeals. These letters have no information or specific reasons about why she did not qualify. They advised her again she could not re-apply for nine months.
85. When we spoke to Miss E in October, she advised that neither the Council nor AI had contacted her about the change in the law about hidden disabilities.
86. In response to our enquiries, the Council advised that, until 14 June 2019, it was unclear what the hidden disabilities criteria would look like (this is the date the Department of Transport released a new version of its Guidance). The Council says it took some time to implement changes following the release of the Guidance.
87. It also said:
- “...a blanket policy of encouraging reapplication from the date the criteria changed would have had a negative impact on the service. As such the process remained as per the guidance in place at the time and when the new criteria was implemented these changes were well publicised.”*

Mrs F’s complaint

88. Mrs F is 77 years old. Her son helped her apply for a Blue Badge and Taxicard. In December 2018 the Council refused her application at its desktop screening stage. Mrs F appealed, so the Council invited her to an assessment.
89. On the assessment form, AI’s assessor noted Mrs F’s vascular dementia. They noted she could not walk on her own because of her dementia. As a result of the assessment, the assessor awarded Mrs F 16 points. The Council refused the application. The letter included the standard paragraph about reapplications.
90. In response to our enquiries, AI said:
- That it suggested a new assessment for Mrs F under the new hidden disability criteria.
 - *“Our decision text ... is not consistent with the policy statement which states that an applicant can reapply sooner if they can clearly demonstrate that their condition has deteriorated such that they would now clearly meet the criteria. I am in the process of redesigning all the correspondence letters used across the service to modernise and reflect current policy and practice so would be happy to amend these to reflect the current policy position if this is agreeable to the council.”*
 - *“It is also worth noting that in addition to the fact the council has been offering new assessments to those applying under the H[idden] D[isability] criteria with less than 9 month from their previous assessment, at the time of the applicant’s appeal the DfT was yet to release [its preliminary] guidance for the anticipated new criteria, so the council could not reasonably be expected to pre-empt their contents. The changes have since been well communicated to the public.”*
91. We asked the Council about how it had publicised the changes. It advised us it had given a presentation to a leading mental health charity.

Analysis

92. AI/the Council had information that suggested Miss E and Mrs F might benefit from the “hidden disabilities” changes. With Mr C’s complaint, the Council advised it made a judgement whether applicants would likely meet the new criteria. But there is no evidence the Council has considered either Miss E’s or Mrs F’s circumstances in relation to the new rules. That was fault.
93. The Council’s advice that Miss E and Mrs F could not reapply for nine months (and then only if they had had a change of circumstances) was significant, as the Council knew about the change in the qualifying criteria. That meant it knew they would likely have a change in circumstances within the following nine months. The lack of consideration of their individual circumstances meant it did not consider this.
94. Our view is the publicity the Council has advised us of was not sufficient to compensate for the lack of signposting, and incorrect advice, to applicants such as Miss E and Mrs F.

Freedom Pass

Mr G’s complaint

95. Mr G says he has several mental health issues. His representative says he experiences insomnia and night terrors, due to his past experiences. The representative also says Mr G drinks alcohol nightly before going to bed, to allow him to get some undisturbed (albeit poor quality) sleep. The lack of sleep compounds memory and concentration problems.
96. Mr G applied for a Freedom Pass. AI refused the application. The decision letter has no explanation of the reason for refusal.
97. Mr G appealed the decision with the help of his representative. He argued he should qualify, based on the fact he would be refused a driving licence. Mr G’s representative advised Mr G’s alcohol use was not the cause of why he could not drive. Rather it was an attempt to alleviate the problems caused by Mr G’s mental ill-health. And the mental health issues were the reasons why Mr G would be refused a driving licence. He sent in medical evidence to support the appeal. These letters from June 2016 to October 2018 advise Mr G’s condition was consistent with severe depression and anxiety and problems with memory and confusion.
98. A mobility assessor met Mr G for an assessment. The appeal decision letter refers to an appeal summary. It advises Mr G he could reapply after nine months, if his circumstances had changed. It has no analysis of the medical evidence Mr G and his representative provided. And it has no consideration of the issues Mr G’s representative made in support of his appeal.
99. We asked the Council for a copy of the summary. It provided the complete assessment record. This is mainly concerned with the physical mobility assessment. It notes Mr G does not qualify for a Freedom Pass “*due to evidence of persistent alcohol abuse underpinning MH issues*”. Elsewhere on the form the assessor notes Mr G’s mental health problems were “*compounded by alcohol misuse*”.

Analysis

100. The Council’s decision letter does not provide enough explanation for its decision. AI has not addressed the argument Mr G’s representative made, nor the medical

evidence submitted. Our view is the lack of consideration of these issues casts doubt on whether the decision was properly made.

Conclusions

101. It is not our role to decide if someone is eligible for a disabled parking badge or Freedom Pass. However, we can look at how a council made a decision. We have found fault causing injustice in several complaints.
- Lack of a detailed explanation in desktop assessments.
 - Problems with the summaries the Council is sending out with assessment and appeal decisions. Handwriting, acronyms and jargon mean they do not always meet the Guidance's recommendation for a clear explanation for refusal.
 - A lack of recorded consideration of all the evidence (or lack of evidence) in some paper based assessments.
 - Lack of detail in some assessment summaries about:
 - why, when there are conflicting factors, one descriptor was chosen over another;
 - why a descriptor was chosen when recorded observations suggest another possible option;
 - an analysis of observations against other evidence that conflicts;
 - observations that an applicant had walked less than 40 metres in a minute and why an assessor did not consider that qualified an applicant for a Badge.
 - Not advising applicants about changes to the rules. Instead misadvising applicants the Council's policy is they cannot apply for nine months and only after that if there is a change in circumstances.
 - Not considering evidence and argument about why it had used the wrong test in deciding an applicant did not qualify for a Freedom Pass.
102. Because of the fault in the process we cannot be assured the accompanying decisions were correct.

Recommendations

103. In response to our decision on earlier complaints and our enquiries into these complaints, the Council and its contractors have made some changes.
- It was sending out the last page of its assessment document to provide some explanation for its decisions, when it has carried out a full assessment.
 - It had amended its policy on reapplications, when there is a change of circumstances.
 - It had agreed to amend its standard paragraph on reapplications, to match what its policy says.
 - It had advised it is working towards:
 - providing a more tailored explanation for applications it refuses at its paper stage; and
 - providing typed decision summaries.

But it had not been able to give a timescale for when it intends to introduce these changes.

- It had offered reassessments to Mr B, Mr C and Mrs F.

104. We welcome that, in response to our draft report, the Council agreed to take the following action to remedy the injustice identified in this report.

- Offer new assessments to Mr D, Miss E, Mr G, Mrs H and Mr I.
- Remind “paper-stage” assessors of the requirement to only refuse applicants that are clearly ineligible. If an application form is not fully completed, this needs analysing in any decision to refuse an application.
- Remind all assessors of the importance of having a full record that allows a third party reader – the applicant or a reviewer – to understand the reasons for a decision. For example, fuller explanations of why descriptors are chosen; especially when they conflict with other evidence.
- Remind assessors the Guidance says explanations should be clear. So information sent to applicants should avoid jargon and acronyms. Any handwritten documents should be legible.
- Remind assessors that it is especially important to provide reasoning when they have observed a walking speed of less than 40 metres a minute and refused the application. This is because the Guidance notes this, alone, likely indicates very considerable difficulty in walking.
- Draw up an action plan that will clearly specify when it will implement the recommended changes to the assessment process and decision letters, for paper, assessment and appeal stage decisions.

105. The Council has already produced an action plan. Its full Council, Cabinet or other appropriately delegated committee of elected members also needs to consider the report, within three months. We will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

106. We uphold these complaints. The Council has agreed to our recommendations, so we have completed our investigation.