

**Report under Section 16 of the Public Services Ombudsman (Wales) Act 2005, of an investigation into a complaint made against Caerphilly County Borough Council**

**THE COMPLAINT**

1. Mr K had applied for a DPPP as he had a range of medical problems and was severely disabled, being unable to move unassisted from the car to the house. Mr K is dependent upon Mrs K to drive him as he is a wheelchair user and has to be assisted with all movement. The family lives on a busy "T" junction in an area with parking on both sides of the street. Opportunities to park near the house are limited. Mr K's application was turned down as he was not the driver of the vehicle and his application did not appear to meet the criteria being applied by the Council. Mr K then submitted a further application which was treated as an appeal against the initial decision. This was also turned down on the grounds that circumstances were unchanged from the first application and that Mr K was not eligible for further assessment as he was not the driver of the vehicle. The second refusal advised the family that they could double-park in the street in order to assist Mr K in or out of the vehicle and Mrs K could later re-park the car when he was indoors alone.

2. Mrs K complained to me as she did not believe that double-parking was a safe or satisfactory option and because one of her neighbours had been given a DPPP and she did not believe that her case was any less deserving than his. She submitted two letters to the Council from the GP practice which outlined Mr K's specific disabilities, memory loss and her own health and mobility problems.

**THE RELEVANT LAW AND THE COUNCIL'S ELIGIBILITY  
CRITERIA**

3. Local authorities have powers under the Road Traffic Regulation Act 1984 to designate by order a parking space reserved for disabled badge holders such that it would be an offence for anyone not holding a badge to use the space. Caerphilly County Borough Council processes applications for DPPPs under its procedures for deciding upon eligibility for works of adaptations to properties. This is a discretionary power available to them under the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002. The criteria used by the Council for dealing with such applications are as reproduced here;

- a. The person for whom the adaptation is being considered must be "handicapped" within the meaning of the National Assistance Act (or Children Act 1989), i.e. someone who is substantially and permanently handicapped by illness, injury or from birth.
- b. The person must be resident in, or the responsibility of, the Caerphilly County Borough Council (fostering) area. N.B. Foster out of area [sic].
- c. The adaptations must be at the person's only or main residence.
- d. The adaptations must be required for meeting the needs of the person i.e. necessary and appropriate because of the nature of their disability.
- e. The adaptations must to a significant degree actively enhance an individual's independence and/or ability to remain in or be discharged into the community.

- f. Appropriate alternative housing for applicants must be explored before considering the provision of extensive adaptations.

All of the above criteria must be met before the Council will accept a duty of care and make provision for adaptations. Further specific criteria are for the provision of a DPPP are:

- i. The client is a holder of a Blue Badge and is able to evidence themselves as the driver of the vehicle or solely dependent on a member of the same household to drive the vehicle that is available for that use at all times.
- ii. The client is the driver of and is only able to walk or propel themselves a short distance outside of their own home and does not have regular able bodied assistance,

Or

- iii. The client is a passenger who relies on a driver for mobility and either requires constant attention or the driver is only able to assist for a short distance outside their home (subject to an OT assessment from which children with disabilities are exempt),

And

- iv. The client does not have any convenient off-road street parking facilities such as a garage or hard-standing or place to provide such a facility.
- v. Frequent extensive on-street parking in the vicinity of the applicants' home prevents parking in close proximity.

vi. Consideration must be given to the nature and frequency of journeys made.

#### **WHAT THE COMPLAINANT HAD TO SAY**

4. Mrs K explained to my investigator the practical difficulties involved in transferring her husband from the house to the vehicle and vice versa, a transaction which takes several minutes. She said that the situation was causing her considerable distress, not only because of the stress and physical difficulties involved, but also because of the restrictions placed upon she and her husband's social activities by the parking pressure in the area. For example, she would like to take Mr K to visit family and friends or go to specific locations in order to provide more stimulation for him, but trips away from the house are restricted by the need to be home by 4.30 pm in order to guarantee getting a parking space in the road before the neighbours return from work. This precluded, for example, going to visit her son who lives some distance away. Returning after 5pm, she would have to park some distance from the house and negotiate the traffic with Mr K in his wheelchair which would cause her great concern.

5. She did not find any of the suggestions made by the Council in its official response to be either practical or workable and could not understand why her needs as a primary carer had not been fully assessed. She said that no-one had spoken to her specifically about the problem, nor discussed it with her or viewed the parking situation at her home following the applications. She said that she had not been provided with a copy of the Council's eligibility criteria when submitting the applications and was not been given a full explanation of why they were considered ineligible.

6. When she saw the official response of the Council which included a statement outlining where the Council believed the criteria had not been met, she

disputed, through my investigator, the accuracy of the information on which it was based, the practicality of the suggestions made and she submitted further information from the GP which confirmed Mr K's memory loss for the Council to consider, but this did not make any difference to the Council's position.

### **THE OFFICIAL RESPONSE OF THE COUNCIL**

7. In its official response the Council said it believed that Mr K did not meet the essential criteria of the works of adaptation procedure. It also pointed out that Mr K was not the driver of the vehicle, even though its criteria allowed for applications to be made by passengers reliant on others to drive them or by drivers of the vehicle on whom the disabled person depended.

8. The Council acknowledged that Mr K was a passenger who relies on his wife to get to and from the vehicle and said that their advice was that Mrs K could manage the transaction involved in moving Mr K to and from the house and car. It went on to say that from recent information from its own staff the Council felt that Mr K did not require constant attention and was not at risk. It said that the need for constant attention could be demonstrated by people who have memory problems who forget they cannot walk and when trying to get up are at risk of falling and injuring themselves. It also said that the family had an option to provide off-street parking in the rear garden, this opinion being based on an undated and untimed photograph from the internet. It also said that the family could double park while disembarking Mr K from the car. However, this advice is contrary to the Highway Code and advice from police sources; nor does it feature in the eligibility criteria of the Council.

9. The submission went on to say that because the property is located opposite a minor "T" junction, there are additional opportunities for parking in close proximity to the family home. It pointed out that there are no surgeries or 24-hour shops in the vicinity of the property; therefore the only parking

requirement is for residents and visitors. It said that the area is not one of parking stress for these reasons and also that social services staff have no difficulty in parking in the locality during the daytime.

10. The response further said that Mr and Mrs K do not have a need to travel from the property such as employment or regular hospital appointments. The Council acknowledged that not all of this information was given to Mr and Mrs K to explain the Council's position and it apologised for this. However, the decision remained unchanged as they did not fulfil all elements of the criteria.

11. Further information supplied by the Council confirmed that the neighbour of Mrs K's who had been provided with a DPPP and to whom she alluded had not gone through the whole eligibility procedure but a direct referral for a traffic assessment had been made by an occupational therapist and steps had been taken to prevent this recurring.

## **OFFICER INTERVIEWS**

### **Interview with Service Manager – Physical Disabilities and Sensory Impairment**

12. At interview my investigator explored in greater detail with this officer the reasons for turning down the applications. My investigator was advised that the Council was considering a re-drafted set of guidelines in order to eliminate any confusion and to make the criteria more specific and less open to interpretation and also to give the Council the option of ceasing the provision of DPPPs.

13. The officer was asked why the Council's response had said that the family did not meet the essential criteria when it had qualified under the same criteria to

receive adaptations within the home. The officer said that she had in mind the fifth criterion of the essential criteria in mind, relating to the likelihood of enhancing independence and/or likelihood of discharge into the community. After some discussion as to the appropriateness of this, the officer felt, with hindsight, that the family met the essential criteria.

14. The officer had not visited the site in detail nor had any discussions with Mr or Mrs K about their needs and confirmed that there had been no formal assessment of Mrs K's needs. However she considered information provided by my investigator about site specific issues including parking stress, traffic flow and the restrictions these factors placed upon the K's social interaction; this was in conflict with Mr K's formal needs assessment which had identified the need for more social intervention.

15. On the basis of the consideration of existing and new information, the officer accepted that the family were eligible to be considered for a DPPP and she was prepared to recommend that the application went forward immediately for a formal traffic assessment. She also agreed to review the advice regarding double parking which is routinely given to applicants.

#### Interview with Service Manager – Performance Management

16. This officer was advised that the Service Manager – Physical Disabilities and Sensory Impairment, had at the conclusion of her interview changed her decision on the case and he was happy to concur with that view. There followed a general discussion about the Council's approach to this matter and he advised that options were being put to Cabinet to cease the practice of providing DPPPs or to amend the current criteria to make them more clear.

17. He advised that his role within the Council is to look at service areas where they are receiving a large number of complaints and to look at what can

be done. Applications for DPPP's were such a work area and it had been decided that as this is a major work area which causes a lot of difficulties from which few people benefit, that members should be given the option of considering whether the service should in fact cease as it is discretionary or should revise the criteria.

### **CONCLUSIONS AND RECOMMENDATIONS**

18. I find that the Council's existing criteria for the provision of DPPP's are unclear and internally inconsistent and that this constitutes systemic maladministration. Nonetheless I am clear that on a reasonable interpretation of them Mr K qualifies for consideration for the provision of a DPPP. I am glad that the responsible officer in the Council has now recognised this, but there has been a very long delay in coming to a correct decision. I am particularly concerned at the fact that having been prompted to reconsider this case on a number of occasions and having been provided with additional evidence, the Council failed to reconsider its position until I had reached a late stage in my investigation. I am at a loss to understand why the Council repeatedly turned down Mr K's application because he was not the driver when its criteria allowed it to consider his application from the point of view of his being a passenger dependant on someone else.

19. The Council's handling of the Ks' applications for a DPPP was inadequate and unsympathetic. There was a lack of rigour and detailed investigation into the circumstances of the family which should have prompted a different response. Mr and Mrs K could have been spared a great deal of delay and worry had the application been handled more sensitively and had appropriate information been obtained at an earlier stage.

20. To remedy the injustice to Mr and Mrs K, I recommend that the Council considers urgently and sympathetically the provision of a DPPP and I further



recommend that it makes a payment to them in the sum of £750, accompanied by an appropriate apology, in recognition of the undue delay in reaching a correct decision on eligibility, the stress they have been caused, and their time and trouble in bringing this complaint.

21. I note that Council officers had already recognised that its criteria for the provision of DPPPs stood in need of amendment and clarification, and are giving thought to their revision.

22. I was however surprised and disappointed to learn that officers were minded to put before the Council's cabinet the option of ceasing the provision of DPPPs altogether. I have to say that a decision to do so would in my view be an unlawful fettering of the Council's discretion. It is a tenet of administrative law that where legislation gives a discretionary power to a public body, it is unlawful for that body to adopt a blanket policy of refusing to exercise it irrespective of the individual merits of the case. I have no doubt that in giving councils discretionary power to provide DPPPs, Parliament had in mind, as should the Council, the vast improvement they can make to the quality of life for disabled people. I recommend that the Council adopts a policy in respect of the provision of DPPPs which is lawful and which in particular contains eligibility criteria which are:

- objective
- fair
- clear
- workable
- mutually consistent

The policy should provide fair and rational criteria for prioritising eligible applications in the event that these exceed the number of spaces that the Council has budgeted to provide. This policy should be evidenced to me within the next three months.

I have to say that I have seen a draft of revised criteria currently under consideration by council officers and I am not persuaded that it complies with the above or indeed that it represents any great improvement on the existing criteria.

Adam Peat  
Ombudsman

Date: 30 August 2006