

Blue Badge

Complexities of assessing for “Hidden Disabilities” – what is being done already? – Impact?

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Format

- Background
 - Historically not considered
 - What changed
 - Action Taken
 - Interim unofficial guidance
- Hampshire approach
- New Legislation
- Challenges ahead
- Questions

Key LA Assessment undergirding values - inextricably linked

- Use care and fairness at all times and deal with each application on its own merits
- Protect the integrity of the Blue badge Scheme
- Satisfy Legislation - protect the reputation of the LA

Background

- Blue Badge historically - for people with severe walking difficulties – Legislation

“Has a permanent and substantial disability which causes inability to walk or very considerable difficulty in walking”

Disabilities not considered

- Conditions not considered – UNLESS applicants actually had a severe walking disability
 - such as M.E.
 - Autism
 - or any psychological disabilities/conditions have not been considered
 - Crohn's disease or related inflammatory bowel disease

Background continued

- Significant variety of applications received
- Subjective element to applications challenging
- Until 2016, applications were always unsuccessful if there was no evidence of a severe walking difficulty

What changed?

Challenge to a decision received

- Badge not issued as person failed IMA
- Ombudsman challenge was not supported by LGO
- Judicial review challenge via Dept. for Transport (DfT)

Result of Judicial Review

- DfT - legislation did not preclude hidden
- HCC issued the badge
- DfT reviewed legislation and guidance
- Hampshire took LA lead at a national level

Action taken

- Workshops in London with LAs - EMG
- Interim unofficial transition guidance
- DfT working with the LAs, disability groups, and other relevant organisations
- New legislation released to come into force 30/08/2019

Interim decision and guidance

- Some authorities have used the interim guidance
- Other authorities reasonably told people that they do not issue badges for these conditions until the new legislation is released

Interim Guidance

The interim guidance was specifically about neurological impairments and dangerous behaviour – related to the initial Judicial review

Since then the DfT consultation has widened the scope – e.g. Inflammatory Bowel disease (Crohn's disease or ulcerative colitis - not built in to new legislation)

All applications considered on their own merit

While there were always conditions / disabilities not considered in their own right, the application would always be thoroughly examined to tease out possible severe mobility problems

Hampshire Approach undergirded by

- Use care and fairness at all times and deal with each application on its own merits
- Protect the integrity of the Blue badge Scheme
- Satisfy Legislation - protect the reputation of the LA

Hampshire Approach to Interim process

MAIN CONSIDERATION

Person diagnosed with a neurological / cognitive / behavioural impairment or condition with complex needs, and despite having continuous support when out and about, they may still encounter a risk to their health or safety, or the safety of another person.

Other considerations

- Proof of diagnosis e.g. Consultant letter
- How their impairment/condition affects them daily
- Behaviour exhibited due to changes to their environment – is the behaviour manageable?
- How much planning and the type of support that is required for the applicant in these situations?

The following benefits are considered but do not qualify on their own

- Personal Independence Payment (PIP)
Planning your journey 12 points
- Higher Rate Disability Living Allowance –
Care Component
- Higher rate Attendance Allowance

Additional information to support the application

- The applicant already receiving support from Hampshire CC?
 - If so, what is in place to support the applicant?
- For children, is there an Education & Health Care Plan - previously Statement of Special Education Needs
- School risk assessment – What's in place? for trips or classroom?
- A recent report from a Paediatric/OT service
- Applicant in a care home - what aids or additional support in place
- A recent Care Plan
- Does applicant attend memory clinic?
- Other

New Legislation

In regulation 4 (descriptions of disabled persons)—

(a) for paragraph (2)(f) substitute—

“(f) subject to paragraph (3A), has been certified by an expert assessor as having an enduring and substantial disability which causes them, during the course of a journey, to—

(i) be unable to walk;

(ii) experience very considerable difficulty whilst walking, which may include very considerable psychological distress; or

(iii) be at risk of serious harm when walking; or pose, when walking, a risk of serious harm to any other person;”;



New Legislation Contd

(c) in paragraph (3A), from the words “has a permanent and substantial disability” to the end substitute—

“has an enduring and substantial disability which causes them, during the course of a journey, to suffer one of the effects listed at paragraph (2)(f)(i) to (iii).”.

New Legislation contd – “Automatic”

“(g) receives the mobility component of personal independence payment at either the standard rate or the enhanced rate under section 79(3) of the Welfare Reform Act 2012**(b)**, and, in an assessment carried out under the Social Security (Personal Independence Payment) Regulations 2013**(c)**:

- (i) obtained a score of at least 8 points in relation to the “*moving around*” activity; **or**
- **(ii) obtained a score of 10 points in relation to the “*planning and following journeys*” activity on the grounds that they cannot undertake any journey because it would cause them overwhelming psychological distress.”;**

Case 1 – “Automatic” - Has PIP 10 points but PIP says no cognitive impairment

PIP 10 - Cannot undertake any journey because it would cause overwhelming psychological distress to the claimant.

(PIP letter actually statedsignificant mental distress)

Explanation on PIP letter states that the applicant does not have a cognitive impairment

Case 2 – “Further assessment” example

- Autism
- sensory processing difficulties.
- My eyes do not contract in bright light causing immense pain.
- My Diagnosis lists visual stimulation as a danger on roads/car parks.
- Loud noises - cars/horns - people touching my skin, cause me significant pain and distress.
- Being exposed to loud sounds from roads and busy places can lead to sensory meltdowns.
- Cover my ears and I stim (hand flapping and self harming). I lose all awareness of danger
- I wear an identity badge on my wrist and
- Brought home by Ambulance and Police in the past when I have become overwhelmed
- When severe pain in my ears or if people touch my skin I suffer from Dissociation Episodes.
- When stimming in an attempt to stop the pain, become unaware of dangers because I don't recognise where I am. This means I can be sat in the road for example.
- I also have a diagnosis of Epilepsy.
- Epilepsy causes me excruciating pain in all the muscles of my body.
- Epilepsy is stress related
- Current Blue Badge has changed my life - so much freedom and independence
- I can walk anywhere with no car noise like the beach.

Hampshire interpretation

For further assessment - Hampshire's interpretation of the Legislation - to continue current approach

“The applicant has a hidden disability where, in spite of the support provided, the behaviour they display in reaction to their experience still poses a danger/risk to themselves and those around them”

(Level of psychological distress measured by the risk of danger posed)

Challenges ahead

- The assessment process is highly complex
- Every application is unique
- Subjective element a significant challenge
- Protect the integrity of the Blue Badge scheme
- Professional/medical evidence must be provided
- 99% not applied for by applicant – in Hampshire
- Enforcement – Misuse, allegations, fraud (slide next)

Impact on Enforcement

- Increased misuse - Most by carers
- Allegations - Members of public - increase
- Subjective view of applicant - could application be fraudulent? misunderstanding of what qualifies them? Psychosomatic?
- Parking
 - LAs not obliged to provide more parking
 - more difficult for people who can't walk?
 - Will more bays be needed?

QUESTIONS