

GUIDELINES FOR THE DETERMINATION OF STAGE TWO BLUE BADGE, DISABLED PERSONS FREEDOM PASS AND LONDON TAXICARD APPEALS

The Department for Transport's (DfT's) "The Blue Badge Scheme Local Authority Guidance (England) 2012" states that the process for appealing the refusal to issue a Blue Badge should be 'clear, straightforward and fair'. These principles should also be applied to the determination of Disabled Persons Freedom Pass and London Taxicard appeals.

Once the Appeals Sub-Committee has heard the appeal (following the rules set out in the Procedure document) a decision must be made based on the written and oral evidence of the appellant and the Authority.

The Sub-Committee must only consider evidence which relates to the criteria under which a badge / pass / card can be issued. The Appeals Sub-Committee must not consider the appellant's reasons for wanting the badge / pass / card nor their financial or social situation. The Authority is only able to issue a badge / pass / card based upon the prescribed criteria.

The Sub-Committee should make a decision based on a two step process as follows:

STEP ONE – CONSIDERATION OF INITIAL APPLICATION AND STAGE ONE APPEAL

A. Consideration of the procedural fairness of the decision:

- (i) Did the Authority follow the agreed local procedure / practice when considering the appellant's initial application?
- (ii) Did the Authority follow the agreed local procedure / practice when considering the Stage One Appeal?

[For example: Members should consider whether the appellant was offered a mobility assessment with an Occupational Therapist (OT) upon their initial application; and whether the appellant was offered the opportunity to submit medical evidence at the time of the Stage One Appeal. If no mobility assessment was offered the ATU Officer should have explained why this was.]

If answering **yes** to both of the above questions (i and ii), the Committee must proceed to consider (B) the reasonableness of the decision.

B. Consideration of the reasonableness of the decision:

- (i) Was the decision of the Authority at the stage of the initial application one which a reasonable authority would have made in the circumstances of the case?
- (ii) Was the decision of the Authority at the Stage One Appeal one which a reasonable authority would have made in the circumstances of the case?

[For example: Members should examine whether the relevant weight has been given to the mobility assessment and to any medical evidence submitted by the appellant. The Sub-Committee should note the DfT's most recent guidance that authorities should give more weight to Independent Mobility Assessments (i.e. OT assessments) than to GP letters in the determination of Blue Badge applications. The same logic applies to Disabled Persons Freedom Passes and London Taxicards. It is imperative

when considering the reasonableness of the decisions made that this is done entirely in relation to the prescribed criteria, as the Authority is unable to issue a badge / pass / card outside of the prescribed criteria.]

If answering **yes** to both of the above questions (i and ii), the appeal must proceed to step two.

- **If answering ‘No’ to A or B:**

If the Sub-Committee answers No to any of the above questions in (A) or (B), the Sub-Committee must consider whether, given the evidence provided, the appellant would have been issued with a badge / pass / card if proper process had been followed (A) or if a reasonable decision had been made (B). There are three possible outcomes at this point:

1. If the Sub-Committee finds that the appellant would **not** have been issued a badge / pass / card, in the case of a procedurally fair and reasonable decision, Members must **proceed to step two**. However, the Clerk must notify the Authority in writing, detailing the manner in which it was found to have been acting improperly.
2. If the Sub-Committee finds that the appellant would have been issued a badge / pass / card, in the case of a procedurally fair and reasonable decision, Members must **uphold the appeal**, stating under which criteria the badge / pass / card is being issued and in what respect the Authority was found to have acted improperly.
3. If the Sub-Committee cannot determine whether or not the badge / pass / card would have been issued in the case of a procedurally fair and reasonable decision, the case must be **referred for reassessment**: the appellant will be invited to submit a new application, or to undergo a new mobility assessment. The Sub-Committee is to decide which of these actions is the most appropriate under the circumstance.

STEP TWO – CONSIDERATION OF ANY ADDITIONAL MEDICAL INFORMATION FOLLOWING STAGE ONE APPEAL

Step two requires the Sub-Committee to determine whether the appeal should be upheld based on any new evidence received since the stage one appeal. **If no new evidence has been received since stage one appeal, then the appeal cannot be upheld at this stage.**

In considering any new evidence the Sub-Committee should consider the following questions:

- What is the ATU Officer’s assessment of the new evidence?
- Who has submitted the evidence e.g. is it from a GP / medical professional?
- Does the evidence explain if / how the appellant meets one of the qualifying criteria?

The Sub-Committee should also note the following guidelines:

1. If the appellant is applying under the assessed mobility criteria, the new evidence must relate to the appellant’s mobility and the evidence must explain how mobility is affected. Medical conditions which do not affect the appellant’s mobility must

not be considered. Similarly, financial, social or housing factors must not be considered.

2. If the evidence relates to a procedure or examination which is to be carried out in the future, the Sub-Committee cannot adjourn to await the results of this. The Sub-Committee must reach a decision based on the current available evidence. If an appellant's condition or diagnosis changes in the future this can be assessed by a new application.
3. In reaching a decision based on new evidence, the Sub-Committee must be mindful of the DfT's guidance which sets out that more weight should be given to Independent Mobility Assessments than to GP letters.
4. The Sub-Committee must not attempt to re-assess the appellant's mobility or medical conditions based on how the appellant presents themselves at the time of the meeting. All decisions must be based upon expert medical information.

OUTCOME:

- If the Sub-Committee decides that the new evidence is sufficient and compelling enough to indicate that the appellant meets the prescribed eligibility criteria the reasons for this decision must be clearly stated and the Sub-Committee must identify the criteria under which the pass / badge / card is being issued. In this case the appeal will be upheld.
- If the Sub-Committee finds that the new evidence is not sufficient to contradict the decision of the Authority, the appeal cannot be upheld.