

Subject:	Consideration of report by the Local Government and Social Care Ombudsman	Status:	For Publication
Report to:	Council	Date:	11 th July 2018
Report of:	Director of Communities	Portfolio Holder:	Operations
Key Decision:	<input type="checkbox"/> Forward Plan <input checked="" type="checkbox"/>	General Exception	<input type="checkbox"/> Special Urgency <input type="checkbox"/>
Equality Impact Assessment:	Required:	No	Attached: No
Biodiversity Impact Assessment	Required:	No	Attached: No
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1.	RECOMMENDATION(S)
1.1	That Members consider this report and the appended Report and Further Report by the Local Government and Social Care Ombudsman and confirm the action it proposes to take in response.

2. PURPOSE OF REPORT

- 2.1 To inform Members of the further report received from the Ombudsman in relation to complaint number 15 011 613 and update Members generally to enable them to determine what course of action to take in this matter.

3. CORPORATE PRIORITIES

- 3.1 The matters discussed in this report impact directly on the following corporate priorities:

- **A clean and green Rossendale:** our priority is to keep Rossendale clean and green for all of Rossendale's residents and visitors, and to take available opportunities to recycle and use energy from renewable sources more efficiently.
- **A connected and successful Rossendale that welcomes sustainable growth:** our priority is to ensure that we are well connected to our residents, key partners and stakeholders. We want to make the most of every pound we spend and we are always looking for new and innovative ways to make the resources we do have, work harder for us.
- **A proud, healthy and vibrant Rossendale:** our priority is to ensure that we are creating and maintaining a healthy and vibrant place for people to live and visit.

4. RISK ASSESSMENT IMPLICATIONS

- 4.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:

The Local Government and Social Care Ombudsman (the Ombudsman) has advised that there is a risk that it or the complainant may consider Judicial Review if appropriate consideration to the reports is not given by Members. This is mitigated by Members being fully informed of the material facts and in receipt of the necessary reports which have been fully digested.

5. BACKGROUND AND OPTIONS

- 5.1 This matter relates to a complaint brought against the Council about the length of time taken to deal with an application for a hackney carriage badge. The complainant exhausted the Council's complaint procedure without satisfaction and therefore complained to the Ombudsman. The Ombudsman investigated the matter and decided to issue a public interest report to highlight the particular issue as the Council did not agree with the Ombudsman during the investigation stage.
- 5.2 A first report was issued by the Ombudsman on 8th June 2017 which was required to be advertised for public inspection and considered by a meeting of the Council. This report is Appendix A and concluded fault causing injustice and recommendations were made.
- 5.3 This report was considered by Cabinet on 13th September 2017. The report is attached at Appendix B. This report outlines how the Ombudsman appeared to be saying, amongst other things, that the issues the Council was facing were as a *'result of the Council's policy decision not to place restrictions on taxi drivers from outside the borough applying to it for licences'* and that it *'was open to the Council to restrict the issuing of licences to drivers intending to ply for hire in the borough. But it chose not to'*. It further suggested that 16 weeks was an excessive time to process and issue a hackney carriage drivers licence.
- 5.4 As the Council was not lawfully in a position to be able to restrict drivers, only vehicles, and there is no statutory time frame for dealing with applications the recommendations were not accepted by Cabinet.
- 5.5 Upon publication of the Further Report by the Local Government and Social Care Ombudsman at Appendix C, officers of the Council met with the Ombudsman and his Assistant Ombudsman in order to clarify matters. They have agreed the position regarding restriction on drivers and clarified that the fault as they see it is that the Council should have had policies in place sooner, to include geographical knowledge tests and intended use policy, and should have foreseen the situation that arose because they were not in place. Had this been the case it was unlikely that the influx of applications received would not have occurred.
- 5.6 During this complaint the Council has been extremely concerned that to set a timescale on processing applications could affect Licensing Authorities throughout the country. There is no time limit set in legislation or guidance and the Council has maintained that 16 weeks was not an excessive time scale having regard to public safety.
- 5.7 The Ombudsman has confirmed in no uncertain terms that each application must be considered on its own circumstances and is not intending the recommendation in this particular complaint to be any kind of precedent. Whilst the Council's concerns were acknowledged they advise that they will consider any complaint it receives of a similar nature on its own facts. They maintain their position that the complainants case was unusual as she was in a position to demonstrate that she had been offered paid employment rather than being a self-employed taxi-driver.
- 5.8 The Ombudsman has noted the good work the Council has done with the introduction of its new policies to include basic skill test, geographical knowledge tests and intended use policy.

This has seen a significant decrease in applications received.

Currently the authority licences 497 hackney carriages which has reduced from 2500, and this figure is still reducing.

The total number of hackney carriage drivers has reduced from 4500 to 2548 and again this will continue to fall.

Between June 2018 and May 2019 a total of 2084 driver licences will be up for renewal, the vast majority of whom will either not submit an application or fail to pass the required tests.

The current success rate in the knowledge and conditions test is between 8 and 10%. However in relation to drivers working in Rossendale as opposed to remotely across the country, the success rate is 98%

Once a completed application has been received, all DBS and medical certificates verified and all knowledge tests and safeguarding training undertaken, a driver licence will be issued within 2 to 3 weeks. However the expediency with which a licence is issued should not be seen as the overriding concern, but to ensure that drivers licenced are fit and proper and public safety is not compromised.

- 5.9 Our internal auditors carried out a full audit of the Licensing service to include the hackney carriage and private hire regime in November 2017 and they found “significant assurance” in the work that was undertaken. This is testament to the hard work put in by the Council and its officers with the Council now being looked to for best practice and advice of other local authorities.
- 5.10 Having regard to this report and the clarification now given by the Ombudsman as to the meaning of their report Members must now consider whether to accept the recommendation and make the necessary arrangements to ensure full compliance with the recommendations set out in the Ombudsman’s original report dated 8th June 2017.

COMMENTS FROM STATUTORY OFFICERS:

6. SECTION 151 OFFICER

- 6.1 The recommendations laid out in the original report of the Ombudsman include financial recompense in the sum £350. Paragraph 4.1 notes the mitigation process to avoid any financial implications arising from a judicial review.

7. MONITORING OFFICER

- 7.1 Members will note that the findings on fault are binding on local authorities and whilst recommendations are not binding robust reasons for not following the same must be given if it is to avoid further challenge by way of judicial review.

8. POLICY IMPLICATIONS AND CONSULTATION CARRIED OUT

- 8.1 The requisite notices were placed within the newspapers in line with legislation and place in the Council’s One Stop Shop for public inspection. There are no policy implications arising from this report. The Council has already implemented a full suite of policies and procedures to great effect.

9. CONCLUSION

9.1 Whilst the historical issues dealing with hackney carriage and private hire regime has been well documented it has been clear that this is an unusual case and the Ombudsman does not seek to open the floodgate to challenges against timescales for processing applications. Officers believe that the clarification from the Ombudsman to both the apparent inaccuracies in their original report and potential for precedent setting for not only this authority but every other licensing authority in the country, the injustice in this complaint can be accepted and recommendations followed. The robust policies and administrative process now safeguard against a reoccurrence and this this is clearly evidenced within the body of this report.

Background Papers	
Document	Place of Inspection
Appendix A - Original report of the Local Government and Social Care Ombudsman dated 8 th June 2017	Council's Website https://www.rossendale.gov.uk/ The Business Centre, Futures Park
Appendix B – Cabinet report dated 13th September 2017	
Appendix C - Further report of the Local Government and Social Care Ombudsman dated 23 rd February 2018	

Report by the Local Government Ombudsman

Investigation into a complaint against Rossendale Borough Council (reference number: 15 011 613)

8 June 2017

The Ombudsman's role

For 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.

Investigation into complaint number 15 011 613 against Rossendale Borough Council

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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 X - the complainant acting on behalf of his daughter

Mrs Y - the complainant's daughter and applicant for a hackney carriage driver's licence

Report summary

Hackney carriage driver licensing

Mr X complains on behalf of Mrs Y that the Council delayed in processing Mrs Y's application for a hackney carriage driver's licence. He also complains the Council failed to deal with his complaint properly.

Finding

Fault found causing injustice and recommendations made.

Recommendations

We recommend the Council pays Mrs Y £350 in recognition of the uncertainty, anxiety, frustration and financial loss she experienced, and the unnecessary time and trouble she has been put to.

We also recommend the Council identifies and reviews any other complaints received in relation to delays in processing taxi licence applications under its previous policy. Should the Council identify other applicants in similar circumstances to Mrs X, who are able to evidence a significant injustice, the Council should consider how to remedy this.

As required by the Local Government Act 1974 the Council must:

- a. Lay this report before the Council;
- b. Consider the report and its recommendations; and
- c. Within three months of receiving the report, notify us of the action which it has taken or proposes to take in response.

Introduction

2. Mr X complains the Council took too long to process Mrs Y's application for a hackney carriage driver's licence and as a result Mrs Y was not able to work and support her family. Mr X also complains that when he raised the issue of delay with the Council it refused to deal with his complaint.

Legal and administrative background

3. The Ombudsman investigates 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))

How we considered this complaint

4. We have produced this report following the examination of relevant files and documents.
5. We have given the complainant and the Council a confidential draft of this report and invited them to comment. We had a telephone conference with the Council to discuss its views. We took the comments received from the Council and Mr X into account before the report was finalised.

Investigation

6. Mrs Y had been offered paid employment as a hackney carriage driver with a local taxi company. This offer was subject to her obtaining a hackney carriage driver's licence from the Council. Mrs Y applied for a hackney carriage driver's licence on 26 May 2015.
7. The Council processed Mrs Y's application and issued a licence on 16 September 2015. Mrs Y started work for the taxi company the following week.
8. Mr X complained to the Council about the time taken to issue the licence. He states other neighbouring councils issue licences in a matter of days while the Council took 16 weeks to issue Mrs Y's licence. Mr X states the Council's delay in issuing a licence prevented Mrs Y from working and as a result she has suffered a financial loss.
9. The Council considered Mr X's complaint was a repetition of a complaint he had previously made in his own right about a delay in issuing his own hackney carriage driver's licence. It advised Mr X it had already responded to these concerns and the position remained the same.
10. Mr X was not satisfied by the Council's response and asked for his complaint to be reviewed. As the Council maintained its position Mr X has asked us to investigate his complaint.

11. In responding to our enquiries the Council states that at the time Mrs Y submitted her application the Council had a backlog of applications. The Council is not able to establish the number of applications pending at the time, but has confirmed it received 11 applications on the day Mrs Y submitted her application. The Council states that all of these 11 applications were processed on 16 or 17 September 2015.
12. The Council states the backlog was due to a significant increase in the number of new applicants, particularly from applicants outside the Council's controlled area. It states the reason for this is a 2008 court judgement which clarified that once a vehicle has been licensed as a hackney carriage it is a hackney carriage for the duration of that licence, irrespective of where it is currently located. It can therefore be used for pre-booked purposes in any district in England and Wales.
13. While the application backlog was at its highest the Council states it allocated additional resources to deal with it. Since this time the Council states it has increased its staffing in the licensing unit and set times at which it will accept calls. This allows officers the time to process applications.
14. In February 2016 the Council revised its policy for the Licensing of Hackney Carriage Drivers and Vehicles. This revision introduced some pre-requisite assessments and mandatory training. It also introduced an Intended Use Policy. Under this policy any applications for a new hackney carriage vehicle licence where there is no intention to use the vehicle predominantly within the Borough of Rossendale are refused.
15. The Council considers it has acted within the legislative framework. There is no statutory time limit in which to process applications. It deals with them on a first come first served basis. The Council has also raised concerns about the potential impact on public safety if it were required to determine all applications within a certain timeframe.

Conclusions

16. While there is no statutory time frame for processing hackney carriage driver's licences, we would expect the Council to do so in a timely manner as a matter of good administrative practice. We recognise the Council's concern to ensure public safety and would not expect the Council to compromise this in order to meet an arbitrary timeframe. Each application must of course be given proper consideration.
17. But there is no suggestion the delay in issuing Mrs Y's licence was because the Council had any particular public safety concerns about her application or needed further information. As there was no issue with Mrs Y's application documentation we consider 16 weeks is an excessive amount of time to process it and amounts to fault.
18. In reaching this conclusion we are also mindful that this is an unusual case. It is not a case of delay caused by short term staff shortages or unforeseen circumstances which have temporarily affected the day to day running of the licensing department. But rather it is the result of the Council's policy decision not to place restrictions on taxi drivers from outside the borough applying to it for licences. The Council chose to adopt a policy which had the potential to attract high volumes of applicants from across the country and failed

to allocate sufficient resources to manage the resultant demand for its services. We consider this amounts to administrative fault.

19. We recognise the Council has now taken steps to reduce the backlog and improve its processes but consider it should have taken this action sooner. If the increase in applications is due to a court decision in 2008 the Council has had ample time to foresee and address the problem. The Council did not have a written taxi licensing policy or any published procedures outlining how it dealt with various aspects of vehicle and driver licensing until February 2011. When drafting this policy it was open to the Council to restrict the issuing of licences to drivers intending to ply for hire in the borough. But it chose not to.
20. Although applications for hackney carriage drivers' licences reached their peak in 2015, there had also been significant increases in the preceding years.
21. There is also fault in the way the Council considered Mr X's complaint. This complaint relates specifically to the time taken to process Mrs Y's application, and we would have expected the Council to respond to it as such.

Injustice

22. As a matter of administrative good practice we would consider a council should generally be able to deal with a fully completed straightforward application within six weeks of receipt. We have visited the Council's website at various points over the course of our investigation and note the Council has been able to deal with applications in a considerably shorter timeframe. For example on 2 December 2015 the Council's website confirmed it was processing applications submitted just a week earlier, on 25 November 2015. In June and September 2016 it was processing applications submitted three weeks earlier, and more recently, in January 2017 it was processing applications submitted two weeks earlier.
23. Had the Council processed Mrs Y's application within six weeks she would have been able to start work approximately 10 weeks earlier.
24. We recognise that other applicants may also have experienced delay in obtaining a taxi driver licence. Our decision on Mrs Y's complaint does not create a precedent for other complaints, nor does it seek to set a universal standard timescale for the administration of taxi licences. Rather it is our judgement about what would have been reasonable in the particular circumstances of this case. Not all applicants will have been affected in the same way, or be able to demonstrate they have suffered an injustice.
25. Mrs Y's circumstances are unusual as she was not, and did not intend to become, a self-employed taxi driver with potentially irregular or unpredictable earnings. She has provided evidence she had been offered paid employment, once she had her taxi licence. The delay in being able to take up this opportunity has caused Mrs Y uncertainty, anxiety and frustration as well as financial loss. She and Mr X have also been put to unnecessary time and trouble in trying to resolve the matter.

Decision

26. Fault found causing injustice and recommendations made.

Recommendations

27. We recommend the Council pays Mrs Y £350 in recognition of the uncertainty, anxiety, frustration and financial loss she experienced, and the unnecessary time and trouble she has been put to.
28. We also recommend the Council identifies and reviews any other complaints received in relation to delays in processing taxi licence applications under its previous policy. Should the Council identify other applicants in similar circumstances to Mrs X, who are able to evidence a significant injustice, the Council should consider how to remedy this.
29. As required by the Local Government Act 1974 the Council must:
- a. Lay this report before the Council;
 - b. Consider the report and its recommendations; and
 - c. Within three months of receiving the report, notify us of the action which it has taken or proposes to take in response.

Subject:	Consideration of report by the Local Government Ombudsman	Status:	For Publication
Report to:	Cabinet	Date:	13 th September 2017
Report of:	Director of Communities	Portfolio Holder:	Regulatory Services
Key Decision:	<input type="checkbox"/> Forward Plan <input checked="" type="checkbox"/>	General Exception	<input type="checkbox"/> Special Urgency <input type="checkbox"/>
Equality Impact Assessment:	Required:	No	Attached: No
Biodiversity Impact Assessment	Required:	No	Attached: No
Contact Officer:	Phil Morton	Telephone:	01706 252442
Email:	philmorton@rossendalebc.gov.uk		

1.	RECOMMENDATION(S)
1.1	That Members consider the content of this report and the attached Local Government Ombudsman report and decide whether or not to accept the recommendations made by the Ombudsman

2. PURPOSE OF REPORT

2.1 To inform members of the report of the Local Government Ombudsman in relation to complaint number 15 011 613 published on 8th June 2017 and its recommendations.

3. CORPORATE PRIORITIES

3.1 The matters discussed in this report impact directly on the following corporate priorities:

- **A clean and green Rossendale:** our priority is to keep Rossendale clean and green for all of Rossendale's residents and visitors, and to take available opportunities to recycle and use energy from renewable sources more efficiently.
- **A connected and successful Rossendale that welcomes sustainable growth:** our priority is to ensure that we are well connected to our residents, key partners and stakeholders. We want to make the most of every pound we spend and we are always looking for new and innovative ways to make the resources we do have, work harder for us.
- **A proud, healthy and vibrant Rossendale:** our priority is to ensure that we are creating and maintaining a healthy and vibrant place for people to live and visit.

4. RISK ASSESSMENT IMPLICATIONS

4.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:

- Acceptance of the recommendations may lead to the Council being subject to further claims

5. BACKGROUND AND OPTIONS

In this report, individuals will be referred to as Mr X and Miss Y in line with the terms used in the report of the Local Government Ombudsman.

5.1 The report at **Appendix A** is from the Local Government Ombudsman in relation to a complaint received from a Mr X on behalf of his daughter Miss Y.

The background to the complaint is that on 26th May 2015, Miss Y applied for a hackney carriage driver licence with Rossendale Borough Council. The licence was issued on 16th September 2015.

Mr X complained to the Council that the process took too long and that as a result Miss Y was unable to work and support her family. Following investigation into the claim we did not uphold the complaint and maintained our position. Mr X then complained to the Ombudsman.

5.2 The details of the investigation carried out by the Ombudsman are set out in paragraphs 6-15 of their report.

Details of their conclusions are set out in paragraphs 16-25.

5.3 However, the Ombudsman has drawn these conclusions based on an inaccurate legal position.

5.4 As outlined, in 5.1 the basis of Mr X's complaint was in relation to the issuing of a hackney carriage drivers licence.

In paragraph 18 of their report the Ombudsman states;

It is the result of the Council's policy decision not to place restrictions on taxi drivers from outside the borough applying to it for licences. The Council chose to adopt a policy which had the potential to attract high volumes of applicants from across the country

Paragraph 19 states;

When drafting this policy it was open to the Council to restrict the issuing of licences to drivers intending to ply for hire in the borough. But it chose not to.

Legally, a council cannot put restrictions on driver application numbers, only on vehicle applications. The Council has the ability to introduce policies designed to test the basic skills and knowledge etc. but it cannot restrict numbers based on geographic, intended use or any other criteria. This can only be done in relation to vehicle licences.

Miss Y was not applying for a vehicle licence.

The assumption that we could have stopped individuals applying for driver's licences is therefore inaccurate.

Contrary to the Ombudsman's conclusions, it is the Council's argument that this situation **was** a case of the alleged delay being caused by short term staff shortages and unforeseen circumstances which temporarily affected the day to day running of the licensing department.

It was **not** because of the Council's policy decision not to place restrictions on taxi drivers from outside the borough applying to it for licences, because legally the Council cannot introduce such a policy.

In relation to the conclusion that 16 weeks is an excessive length of time to process and issue a hackney carriage drivers licence, this is in line with, and in some cases quicker than a number of other local authorities who have not been subject to unprecedented demand for drivers licences.

For example, Transport for London advises that the process will take 16 weeks, Renfrewshire between 3 and 9 months, and Shropshire within 6 months. Trafford Council currently has a 2 year wait for an appointment and is processing email applications received on 18th August 2016.

In September 2015, the month when Miss Y was issued with her driver's licence, a total of 474 driver's licences were issued. Applications for all these licences were received in May 2015.

Paragraph 22 of the Ombudsman's report quite correctly points out that we published on our website when applications received for licences were being processed. This did not say when the licences were being issued, but merely when the process had been started.

The Council accepts that the recent introduction of a knowledge and conditions test will have the effect of reducing the numbers of new applicants, but it cannot impose restrictions on numbers of applications for drivers licences purely based on address or intention to work outside the district.

If the applicant passes the test, and other criteria then they are entitled to be licensed regardless of where they live.

COMMENTS FROM STATUTORY OFFICERS:

6. SECTION 151 OFFICER

6.1 The Ombudsman has recommended a payment to Miss Y of £350.

7. MONITORING OFFICER

7.1 Under section 31(2) Local Government Act 1974 the Council must consider this report and confirm to the Ombudsman the action it has taken or proposes to take.

8. POLICY IMPLICATIONS AND CONSULTATION CARRIED OUT

8.1 Section 30 of the 1974 Act requires the Council to place two public notice announcements in local newspapers/newspaper websites within two weeks of receiving the report. Notices were therefore placed in the Rossendale Free Press and Lancashire Telegraph and the Ombudsman was advised accordingly. The Council has also made copies of the report available free of charge at the One Stop Shop.

9. CONCLUSION

9.1 Members are asked to consider the report of the Local Government Ombudsman, and the contents of this report and based on all available information, decide whether to;

1. Accept the contents of the Local Government Ombudsman report and its recommendations
2. Reject the contents and recommendations of the report

Background Papers

Document	Place of Inspection
Report by the Local Government Ombudsman	Appendix A

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

**Investigation into a complaint against
Rossendale Borough Council
(reference number: 15 011 613)**

23 February 2018

The Ombudsman's role

For 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 X	The complainant acting on behalf of his daughter
Mrs Y	The complainant's daughter and applicant for a hackney carriage driver's licence

Report summary

Hackney carriage driver licensing

We have written this further report as the Council has failed to comply with the recommendations made in a report issued on 8 June 2017. The recommendations were made to remedy the injustice caused due to fault by the Council. The Council was given three months to respond to the report and provide evidence of compliance. It has refused to do so and we are therefore issuing a further report to highlight the ongoing concerns about the Council's failure to acknowledge and remedy its faults.

Finding

Fault causing injustice and recommendations made.

Recommendations

To remedy the injustice caused to Mrs Y, the Council should make the necessary arrangements to ensure full compliance with the recommendations set out in the original report of 8 June 2017 and provide evidence of this without delay.

The Council should lay the original report and this further report before the Authority. If it is minded not to comply with our recommendations, then this report is required to be considered by full Council in accordance with Section 31A(1A) of the Local Government Act 1974.

Introduction

1. Mr X previously complained to us that the Council took too long to process Mrs Y's application for a hackney carriage driver's licence and as a result Mrs Y was not able to work and support her family. Mr X also complained that when he raised the issue of delay with the Council it refused to deal with his complaint.
2. We investigated the complaint and found the Council to be at fault. A report was issued on 8 June 2017 explaining the basis for the findings of fault and making recommendations to remedy the injustice which had been caused as a result. These included a payment of £350 to Mrs Y in recognition of the uncertainty, anxiety, frustration and financial loss she experienced, and the unnecessary time and trouble she has been put to.
3. We also recommended the Council review any other complaints received in relation to delays in processing taxi licence applications under its previous policy.
4. The Council were informed that under Section 31(2) of the 1974 Act, the report must be laid before the authority concerned. It was asked to arrange for the report to be considered at either full Council, Cabinet or another Committee with delegated authority and tell us, within three months of receiving it, the action it had taken or proposed to take.

Legal and administrative background

5. 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*)
6. The Council were required to consider the original report and confirm within three months the action it has taken or proposes to take. (*Local Government Act 1974, section 31(2), as amended*)
7. If we do not receive a response within the agreed time, or if he is not satisfied with the action the Council takes or proposes to take, he shall make a further report. (*Local Government Act 1974, section 31(2A)*)

How we considered this complaint

8. We produced this report after giving the Council the opportunity to provide evidence to demonstrate it had complied with the recommendations made in the previous report.
9. We gave the complainant and the Council a confidential draft of this report and invited them to comment. We took their comments into account before finalising the report.

Investigation

10. The original investigation into Mrs Y's complaint concluded the length of time the Council had taken to process Mrs Y's application for a hackney carriage driver's licence was excessive and amounted to fault. It also concluded there was fault in the way the Council considered Mr X's complaint. Full details of the report and our findings can be found [here](#).

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11. The original report was issued on 8 June 2017. The Council was given three months to consider and respond to it and was asked to notify us by 10 July 2017 the arrangements it was making to do this. The three-month period ended on 8 September 2017.
 12. The Council presented the report to Cabinet on 13 September 2017. To assist Cabinet Members in considering the report the Director of Communities prepared a report setting out the background and options.
 13. The Director of Communities' report advised Cabinet Members that the Ombudsman's findings of fault were based on an inaccurate legal position. It states:

“Legally, a council cannot put restrictions on driver application numbers, only on vehicle applications. The Council has the ability to introduce policies designed to test the basic skills and knowledge etc but it cannot restrict numbers based on geographic, intended use or any other criteria. This can only be done in relation to vehicle licences.

The assumption that we could have stopped individuals applying for driver's licences is therefore inaccurate.”
 14. The Director of Communities' report also asserted the delay was caused by short term staff shortages and unforeseen circumstances which temporarily affected the day to day running of the licensing department. It was not a consequence of the Council's licensing policy.
 15. The Cabinet resolved not to accept the recommendations set out in the report. The reason given for this decision was:

“The reasoning used by the Local Government Ombudsman was based on an inaccurate legal position. Members felt that the application had been processed in an appropriate timescale having regard to public safety.”
 16. The Council notified us of the Cabinet's decision on 3 October 2017.
 17. We have asked the Council to reconsider its position as the Cabinet's decision not to accept the recommendations appears to be based on a challenge to our findings of fault. While our recommendations are not binding, our findings on fault are binding on local authorities. Case law has confirmed that if a local authority wishes to challenge our findings it must apply for judicial review to quash the decision: R (on the application of Gallagher and another) v Basildon District Council.
 18. We also raised concerns that the Council's response and Director of Communities' report to Cabinet misconstrues our original report. Our report does not suggest the Council can impose formal restrictions on the number of driver's licences it issues. We accept this is not possible and consider the Council is aware from previous communications on this matter that this is not what we were suggesting.
 19. Rather, our report notes the Council can, and has, exercised control over the number of applications it receives by changes to its policy. This has been done by the introduction of a geographical knowledge test and the intended use policy. The Council could have chosen to implement these tests and policies at an earlier stage, and avoided the difficulties it faced in dealing with the volume of applications it received.

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20. In addition, we noted that the Council had not previously suggested the delay in processing Mrs Y's application was due to short term staff shortages or unforeseen circumstances which affected the day to day running of the department. The Council's responses have all attributed the delay to the influx of cases following a significant change in case law in 2008, and made no reference to unexpected staff absence or illness.
 21. The Council has not addressed these issues, but maintains it will not comply with the recommendations. It has asserted that public safety is of paramount importance to it and applications should be given full and proper consideration. It also cites the lack of any statutory national standard as further reason for refusing to accept our recommendations and explains that the length of time taken to process applications is publicly available to applicants on its website.

Events since the draft Further Report was issued

22. In response to the draft version of this further report, the Council has confirmed it does not seek to challenge our findings of fault via Judicial Review proceedings, and it is, in any case, out of time to bring such a challenge. But it has further confirmed it does not intend to comply with the recommendations outlined in our original report.
23. This is not a position the Council can adopt. If it does not challenge our findings through Judicial Review, there is no basis on which it can continue to dispute our decision. In considering whether it will implement the recommendations the Council must have regard to the principles set out in R (on the application of Gallagher and another) v Basildon District Council.
24. The Council does not believe that it misrepresented our findings in the Director of Communities' report to Cabinet. It acknowledges that we recognise restrictions cannot be placed on drivers and has confirmed it will advise Members accordingly when the report next goes before Members.
25. We are pleased the Council will clarify the position when Members consider this further report. However, we consider we have been clear in our communication with the Council throughout this matter. The Council has not previously suggested a lack of clarity or accuracy in our position. It would have been aware that we accept it is not possible to restrict the number of driver's licences it issues and that we have not suggested this.

Conclusions

26. It is disappointing that officers have misrepresented the findings in our original report to Members of the Cabinet. It is also of concern that the decision to reject our recommendations appears to be based upon a rejection of these findings. This suggests a lack of understanding of the Cabinet's role and options in considering the report.
27. The Council may disagree with the findings in our original report, but it is not open to Cabinet to simply reject them. If the Council wished to challenge our findings of fault, the only way to do this was to apply for judicial review to quash the decision.
28. We accept and support the need for proper scrutiny of any applications received and agree public safety should be at the heart of decision making and not be compromised. But, we maintain this can and should go hand in hand with good and efficient administrative practice. In any event, public safety considerations were not an issue that contributed to the unacceptable delay in this case. So, it is a disingenuous and misleading point.

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29. Most of the points that the Council now seek to rely upon were not raised during the investigation, despite it having multiple opportunities to answer the complaint. Our investigation is conducted under the statutory powers of the High Court. It is not acceptable for the Council to provide a selective response during the course of the investigation, then introduce alternative positions once a formal decision has been made.
 30. The Council could have taken steps to manage and control the number of applications received at an earlier date, or ensure adequate staff resources were in place to meet demand, and prevented the situation it subsequently found itself in. It failed to take timely measures to manage the number of applications it received. This led to it receiving and having to process applications from as far afield as Cornwall. A council officer previously outlined possible options to reduce the number of applications and the financial implications of doing so in his reports to the Licensing Committee. The decision not to adopt such measures at an earlier stage contributed to the influx of applications and the delay in processing these. The Council could and should have been able to foresee the situation that arose because of those decisions. The Council's response to the original report fails to address or accept these fundamental failings.
 31. The failure to give proper consideration to an Ombudsman's report falls below the high standards of governance and accountability that are expected of a public body.

Decision

32. The previous investigation into this complaint was completed and a report issued. That explained the faults that had occurred and the resulting injustice. Recommendations were made to remedy that injustice. The Council has failed to provide evidence it has considered the report properly, complied with the recommendations, or indicate what action it intends to take. This has led to this further report being issued.

Recommendations

33. To remedy the injustice caused to Mrs Y, the Council should make the necessary arrangements to ensure full compliance with the recommendations set out in the original report of 8 June 2017 and provide evidence of this without delay.
34. The Council should lay the original report and this further report before the Authority. If it is minded not to comply with our recommendations, then this report must be considered by full Council in accordance with Section 31A(1A) of the Local Government Act 1974.