

27 February 2019

The Welsh Government, Equality, Local Government and Communities Committee

Inquiry into the Blue Badge Scheme in Wales: Eligibility and Implementation

Views submitted on behalf of Barbara Bus Gwynedd, a branch of the Barbara Bus Fund (Registered Charity 257507).

Context

Barbara Bus Gwynedd (the Charity) runs a small fleet of specially adapted vehicles provided for the free use of persons whose disability confines them to a wheelchair, to allow them to undertake journeys for pleasure or necessity which might otherwise be impossible.

The charity has two long established bases in Criccieth and Dolgellau, each with a vehicle carrying an Organisational Blue Badge registered with Gwynedd Council. In the Spring of 2018 a new base was opened in Bangor with a brand new vehicle, and an application made to Gwynedd Council for an Organisational Blue Badge to service it.

That application was initially rejected by the Council on the basis of the formal Guidelines published by the Welsh Government. The Charity's eligibility for Blue Badges for its other vehicles was also called into question. On the basis of an in-house assessment of the relevant legislation, the Charity established significant discrepancies between the Primary Legislation and the non-statutory Guidelines published by the Welsh Assembly. The latter blatantly misrepresented the law on a number of points (see below). An appeal was made to Gwynedd Council containing a request that it base its assessment on the legislation and not on the written guidelines published by the Welsh Government. On the basis of Statutory Provision and disregarding the non-statutory advice provided by the Welsh Government, Gwynedd Council subsequently approved the Charity's application and the new vehicle now carries an Organisational Blue Badge for the use of eligible passengers.

The comments which follow are therefore made in the context of the above, rather convoluted, application. It is hoped that the situation the Charity found itself in and the legal quagmire it had to negotiate will not have to be repeated by other charities. It is hoped that the Committee will recognise the issues and take concrete steps to address them and to prevent the recurrence of such a frustrating situation.

Comments

The comments will be made within the framework of the three clauses which embody the Terms of Reference of the present Inquiry.

i) *The impact of extending the eligibility criteria for a Blue Badge in Wales, and whether further extensions to the criteria are needed.*

The Charity welcomes the extension to the eligibility criteria as provisioned in the various statutory amendments to the Primary Legislation passed by the Welsh Government. In particular, given its own remit, the Charity supports the broadening of entitlement to those with a temporary impairment of mobility. Such disablement necessitates the use of a blue badge during the time it is suffered and a blue badge ought to be made available promptly to those who find themselves in that situation.

The problem arises in the assessment of eligibility. The guidelines published by the Welsh Government for the Organisational Blue Badge place the onus of responsibility on the individual organisation formally to ascertain entitlement, a task for which local authorities themselves have to engage the services of independent mobility assessors. The present requirement is all but impossible for organisations to satisfy (see below).

The Charity would like to see the criteria extended such that all those who find themselves confined to a wheelchair, for however short a period, are entitled to use the Organisational Blue Badge during the whole period of their confinement.

This would require a much quicker and more simplified assessment of eligibility by Local Authorities and much more succinct guidance to organisations.

ii) *The practical implementation and consistency of the Blue Badge scheme across Wales, including assessments, fees and enforcement.*

The assessment of eligibility for the Organisational Blue Badge ought to be based on the requirements of the law, not on the non-statutory guidance arbitrarily issued by the Welsh Government. The scheme is administered by Local Authorities and the Welsh Government has no right of intervention and there is no right for individuals to appeal to the Welsh Government. Why is the Welsh Government muddying the waters by publishing so-called guidance both to Local Authorities and to individuals and organisations? The law is concise and lucid, but the Welsh Government appears to wish to make the scheme infinitely more complex than it actually is in law. Gwynedd Council appears to have had no difficulty in assessing the Charity's application once it focussed on the legislation and disregarded the misleading guidance emanating from Cardiff.

As stated above, the present requirement for organisations to assess eligibility of individual users is too complex and onerous. It requires organisations to have an intimate knowledge and understanding of the law and formally to collect and store highly personal medical data in order to substantiate entitlement. If further extensions to the criteria are enacted, this requirement could become yet more complex and onerous.

The assessment of temporary disability needs to be substantially simplified and a single formal written assessment of mobility, perhaps provided by a GP or physiotherapist, used as the basis for entitlement. The present system is far too complex, slow and expensive and seems merely to have created a whole new industry of independent assessment.

iii) *The support and information that is available to Blue Badge applicants in Wales.*

The present information available for applicants for an Organisational Blue Badge is demonstrably risible.

The problem lies in the wording of the current guidance document issued to organisations by the Welsh Government. It is entitled *The Blue Badge Scheme: Organisational Rights and Responsibilities* and was published in 2012.

On page 5 of that document it is stated that "badges will only be issued to organisations that both care for and transport disabled people". That is an incorrect statement of the law (*Chronically Sick and Disabled Persons Act 1970*, section 21) which states that eligibility extends more broadly to organisations "concerned with the care of the disabled".

On page 8 it is stated that "the badge and its concessions can only be used by employees of the organisation". That is also an incorrect statement of the law, which actually allows use "by or on behalf of the organisation to carry disabled persons of any prescribed description". There is no mention anywhere in the legislation of "employees" and of course voluntary organisations (such as our own) do not have "employees".

On pages 5 & 6 there is a list entitled *Who is eligible for an Individual Blue Badge?* It is on the contents of this list that an organisation is required by the Welsh Government to base its assessment of eligibility. However, this document was published in 2012 and it therefore makes no mention of the broader prescriptions of eligibility contained in subsequent Legislative Amendments passed by the Welsh Government. In particular it is missing the 2016 Amendment, which confers eligibility on those with a temporary impairment to their mobility lasting over 12 months. Why has the Welsh Government not updated this guidance to include this amendment?

If the Welsh Government does insist on issuing guidance documents, it might at the very least ensure that they are accurate and up to date. Applicants need clarity, not confusion and obfuscation.

Conclusion

A simple application by a small charity endeavouring to improve the lives of those confined to wheelchairs in north-west Wales has, quite simply, opened a can of worms. The byzantine and excessive guidance issued by the Welsh Assembly appears to be largely a work of fiction and bears no relation to the actual legislation. The amendments to that legislation passed by the Welsh Government, whilst welcome in their broadening of eligibility, have not been sufficiently and deeply thought through and the responsibilities placed on organisations to ensure entitlement are beyond the capability and resources of small charities such as our own. The whole scheme needs a radical simplification both in prescription and implementation such that those requiring the assistance of a Blue Badge, for however long or short a period of time, can be supported immediately and without distress.