

# Report

on an investigation into complaint nos  
07B15825 & 08 007 844 against Havant Borough Council,  
08 007 839 & 08 007 842 against Chorley Borough Council,  
08 007 843 against East Dorset District Council,  
08 007 847 against Mid Devon District Council,  
08 007 851 against Ribble Valley Borough Council,  
08 007 852 against South Ribble Borough Council, and  
08 020 466 against Medway Council.

**24 September 2009**

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**Injustice**  
**Remedy agreed**

**32**  
**32**

**Key to names used**

Mrs Harper	-	a complainant
Mr Rogers	-	a complainant
Mr Oliver	-	a complainant
Mr Sutton	-	a complainant
Ms Kirby	-	a complainant
Ms Parker	-	a complainant
Mr Hunt	-	a complainant
Mr Milton	-	a complainant
Mr Drake	-	a complainant

## **Report summary**

### **Public transport**

The RNIB complained on behalf of several complainants, all of whom are blind, partially sighted or deafblind, about the loss of concessionary travel schemes which enabled them to travel free at any time of day and the loss of the companion pass which allows a companion to travel free with the disabled person. The nine complainants live in the areas of the seven local authorities investigated.

Prior to 1 April 2008 all the Councils investigated operated local concessionary travel schemes. From 1 April 2008 the Government introduced a new national scheme entitling disabled people and those over 60 to free bus travel between 9.30 am and 11 pm on weekdays and at any time during weekends and public holidays. Local authorities were permitted to offer more generous schemes provided they met any additional cost. The Councils investigated decided to operate only the statutory minimum.

The Ombudsman concluded that when the Councils decided not to offer local additions to the national scheme after 1 April 2008 they failed to consider their duties under the Disability Discrimination Act 1995 and this was maladministration.

The Ombudsman also found that none of the Councils had a mechanism to enable it to consider whether, in special circumstances, the policy should be varied to meet the needs of individuals affected by it. This was maladministration.

Several of the Councils also acted with maladministration when they failed to comply with their own policies by failing to consult service users about the proposed changes; failed to give service users adequate notification of the changes; and failed to comply with their own disability equality schemes.

As a result, the Ombudsman considered that the complainants were left with a justified sense of outrage and may have been put to unnecessary expense and inconvenience. The Ombudsman also considered that the complainants lost opportunity to influence the process by the Councils' failure to consult them about the proposals or provide them with effective notification of the changes.

### **Finding**

Maladministration causing injustice

### **Recommended remedy**

Ribble Valley Borough Council, South Ribble Borough Council, Chorley Borough Council and East Dorset District Council agreed to pay each complainant £100 compensation.

Havant Borough Council and Medway Council agreed to pay each complainant £100 compensation and also to reconsider the question of whether it should put in place additional concessions to those provided under the statutory scheme.

The Ombudsman recommended that Mid Devon District Council reconsider the question of whether it should put in place additional concessions to those provided under the statutory scheme and also that the Council pay Mr Milton £100.

## Introduction

1. From 1 April 2006 to 1 April 2008 disabled people and those over 60 were statutorily entitled to free off-peak bus travel within their local area by virtue of the Transport Act 2000. Local authorities were entitled to offer more generous schemes. All of the councils mentioned in this report did so.
2. From 1 April 2008 the Government introduced a new national scheme<sup>1</sup> whereby disabled people and those over 60 are now statutorily entitled to free bus travel within England between 9.30 am and 11 pm Monday to Friday, and at any time during weekends and public holidays. Local authorities are still entitled to offer more generous schemes but the cost of any such additions is the responsibility of the local authority. All the councils referred to in this report initially decided to operate only the statutory minimum.
3. The Royal National Institute for the Blind (RNIB) complained on behalf of several complainants, all of whom are blind, partially sighted or deafblind, about the loss of concessionary travel schemes which enabled them to travel free at any time of day and the loss of the companion pass which allows a companion to travel free with the disabled person. The nine complainants live in the areas of the six local authorities mentioned in this report.
4. For legal reasons, the names used in this report are not the real names of the people concerned.<sup>2</sup>

## Legal and administrative background

5. A council is statutorily obliged to operate the National Concessionary Bus Pass Scheme (the national scheme). Local authorities have the discretion to adopt a more generous policy but are not obliged to do so. Local authorities must consider whether to exercise this discretion and, as a matter of good administration, should be able to provide contemporaneous written evidence of the matters they considered if a decision is made not to continue with a more generous scheme.

### The general equality duty

6. S49A of the Disability Discrimination Act 1995 (DDA) states,

“Every public authority shall in carrying out its functions have due regard to:

- (a) the need to eliminate discrimination that is unlawful under this Act;

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1 The Concessionary Bus Travel Act 2007

2 The Local Government Act 1974

- (b) the need to eliminate harassment of disabled persons that is related to their disabilities;
- (c) the need to promote equality of opportunity between disabled persons and other persons;
- (d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;
- (e) the need to promote positive attitudes towards disabled persons; and
- (f) the need to encourage participation by disabled persons in public life.”

This is known as ‘the general equality duty’.

7. The Disability Rights Commission (DRC) produced a statutory code of practice in December 2006 which provides guidance to public authorities on how to interpret the general equality duty.
8. The DRC Code states that in all their decisions and functions authorities should give due weight to the need to promote disability equality in proportion to its relevance. This requires more than simply giving consideration to disability equality. The general equality duty requires authorities to adopt a proactive approach, mainstreaming equality into all decisions and activities.
9. In the case of *R (on the application of Chavda) v Harrow London Borough Councils*<sup>3</sup> the Court held that the Council had not had due regard to the general equality duty, and had made an amendment to its adult social care policy unlawfully. The Judge held, “there is no evidence that the legal duty and its implications were drawn to the attention of the decision takers who should have been informed not just of the disabled as an issue but of the particular obligations which the law imposes. It was not enough to refer obliquely in the attached summary to ‘potential conflict with the DDA’ – this would not give a busy councillor any idea of the serious duties imposed upon the Council by the Act... It is important that councillors should be aware of the special duties the Council owes to the disabled before they take decisions... these considerations lead me to conclude that if... the duties... imposed by the Act had been adequately drawn to the attention of the decision makers there would have been a written record of it.”<sup>4</sup>

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<sup>3</sup> *R (on the application of Chavda) v Harrow London Borough Council* [2007] EWHC 3064

<sup>4</sup> Judge Mackie QC *R (on the application of Chavda v Harrow London Borough Council* [2007] EWHC 3064 at [40]



10. The Code states that an authority must include in its disability equality scheme a statement of its methods for assessing the impact of its policies and practices, or the likely impact of its proposed policies and practices, on equality for disabled persons. Impact assessment is not an end in itself but is merely the process which an authority will go through in order to identify and act on the need to modify policies and practices to have better regard to the need to promote disability equality. A full impact assessment is likely to include consideration of the available data and research; an assessment of the effects the policy will have on disabled people and consideration of measures which might mitigate any adverse impact and alternative policies which might better achieve the promotion of equality of opportunity for disabled people.<sup>5</sup>
11. The Concessionary Bus Travel Act 2007 provides for a statutory guarantee of free off-peak travel for eligible and disabled people on local bus services anywhere in England from April 2008. The Department for Transport (DfT) has explained that the main purpose of the Act is to achieve social inclusion benefits for older and disabled people by allowing them greater freedom to travel, free, by local bus. The DfT has explained that, in addition, local authorities have the power under the Transport Act 1985, at their discretion, to offer additional travel concessions to their eligible residents, such as travel before 9.30 am on weekdays or concessions to companions.
12. The DfT made use of a concessionary fares working group and also established a series of task groups to help assess and advise on the practicalities of implementation. These groups consisted of representatives from local authorities and passenger transport executives. The DfT carried out consultation on the proposals and held a number of stakeholder meetings throughout the evolution of the proposals. The stakeholder group included organisations such as the RNIB, Help the Aged and Disabled Persons Transport Advisory Committee, amongst others.
13. The DfT carried out a regulatory impact assessment of the national scheme to ensure that the proposals meet the requirements of legislation such as the DDA.
14. The DfT issued guidance to local authorities on assessing eligibility of disabled people for concessionary bus travel and confirmed that this guidance has been subject to the required consultation.
15. The DfT confirmed to Havant Borough Council by e-mail that the requirements of the DDA would be met by the Council providing the concessionary scheme in accordance with national statutory guidance.

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5 Disability Rights Commission – The Duty to Promote Disability Equality: The Statutory Code of Practice especially 3.1-3.15

16. Lancashire County Council manages concessionary travel on behalf of Travel Concession Authorities in Cumbria and Lancashire including Chorley Borough Council, Ribble Valley Borough Council and South Ribble Borough Council.

## **Investigation**

### **A Mrs Harper and Mr Rogers v Havant Borough Council**

#### **Previous scheme**

17. Prior to the introduction of the new national concessionary travel scheme on 1 April 2008 Havant Borough Council operated a discretionary travel scheme which consisted of:
  - A blind persons' bus pass which was provided at a cost of £10 and entitled the holder to free travel throughout the borough at any time of day for a year.
  - A companion pass which was provided at a cost of £5 and entitled the holder to free travel with a companion at any time of the day for a year.

#### **New scheme**

18. On 19 November 2007 the Executive of Havant Borough Council decided to adopt the national scheme without any discretionary additions for companion passes.

#### **Complaints**

19. Mrs Harper contacted the RNIB to complain about the Council's withdrawal of the blind persons' bus pass and Mr Rogers contacted them about its withdrawal of the companion pass. Mrs Harper can no longer use her pass to travel by bus at peak hours and a companion can no longer travel free with Mr Rogers.
20. Mrs Harper complained that the Council, in reaching its decision to adopt the new national bus scheme without extending the operating hours, gave inadequate consideration to the impact upon residents in a similar situation to her. She is 31 years old and is registered blind. She has two children aged eight and five. She has been in receipt of a travel concession on the buses for approximately six years which has always included free travel at any time of the day. She used this bus pass to take her children to school. She says that having now to pay for her bus fare when she takes her children to school adds further stress to an already stressful experience. She has to ensure that she has the right fare for herself and her children each morning as she is unable to find the money quickly when she gets on the bus or to check her change. She has tried walking to school but is concerned about relying on her eight year old son to help her cross the road. She has also tried walking a different route which does not require her to cross roads but has been panicked by lawnmowers or road works.

21. Mr Rogers had a companion pass for four years. He has difficulty travelling in unfamiliar areas and is unable to travel independently at night or at times of low illumination. As a result of the loss of his companion pass, his independence and access to the community has been severely restricted as he can no longer take a companion on journeys free. He now has difficulty getting to the hospital to see his eye consultant, to his dentist, going shopping, taking exercise (as the swimming pool is on the mainland) or taking his son out. Mr Rogers also states that he has had to restrict his social activities in order to cover the additional cost he now has to bear to attend medical appointments etc.
22. Responding to a draft of this report, the Council states that there is a 'car share' scheme operating on Hayling Island which Mr Rogers could have used at a cost of £1.75 which is cheaper than the companion paying full fare. Hospital transport is also available on request, free of charge. The companion pass would only have been valid for 'legs' of journeys starting within the Borough of Havant. Since the return 'legs' of many journeys start outside the borough, the Council says the value of the companion pass is substantially reduced.
23. Mrs Harper says she was unaware of the withdrawal of the blind persons bus pass when she sent in her renewal form in January 2008. She enclosed the £10 fee, but this was returned with a letter explaining that the blind persons travel scheme no longer existed. Although the Council notified people of the changes in its 'Serving You' publication, Mrs Harper states that she does not recall ever having received a copy of 'Serving You', even in an inaccessible format. The RNIB argues that this is insufficient notification.
24. Responding to a draft of this report, the Council states that every household receives a printed version of 'Serving You' four times a year. Accessible versions of 'Serving You' are available, on request, including in Braille. A message to this effect is printed prominently on each copy so that carers or family members can bring the availability of the accessible versions to the disabled person's attention. There is also a website version.

### **The Council's position**

25. On 19 November 2007 the Executive of Havant Borough Council met to decide how the Council should implement the new national scheme. Prior to the meeting Members attended a lengthy seminar outlining the details of the scheme and the additional options and related costs. Members considered the report of the special projects engineer which set out details of the available options. The Council says its duties under the DDA were raised in the question and answer section of the seminar. However, the seminar was not minuted.
26. The Executive decided to adopt the national scheme without any discretionary additions or exemptions and no companion passes are to be issued under the new scheme. In reaching this decision Members took into consideration the availability of other forms of transport such as 'car share' schemes and free

hospital transport. Members took the view that since these other options were available there was no need for public money to be committed to, in effect, duplicate that availability. Within the timescale of the decision-making process, councillors have the opportunity to 'call in' a decision of the Executive should they so wish. This right was not exercised.

27. The Council had no consultation policy in force at the time. Its disability equality scheme was adopted in 2006. The concessionary travel scheme was taken to the Council's Disability Access Group which is recognised and accepted as the appropriate consultation forum for policies which may have an impact on disabled people within the borough. The group includes representatives of a broad range of disabilities in the borough including members who are registered blind and those who rely on carer support. The group met on 12 November 2007 to discuss the scheme but there are no minutes of this meeting and it is therefore not clear exactly what information was given to the group and what issues were discussed, whether the group expressed any concerns, whether the circumstances of the specific groups affected were considered and whether the group were aware of the Council's obligations under the DDA. The group has, by its nature, an informal 'drop in' format which the Council has found to be the best structure to encourage the sharing of honest views and robust debate. It considers that the taking of formal minutes would take the emphasis away from true engagement. The Disability Access Group also meet formally on a quarterly basis in addition to the 'drop in' sessions. The minutes of the quarterly meeting held on 22 November 2007 record the Executive's decision made on 19 November 2007 that the policy regarding concessionary fares had been changed. This meeting was attended by many representatives of the disabled community.
28. The Council's view is that it is implementing the scheme as laid down by statute and that such assessments as are required will already have been considered at Government level.
29. The Council was advised by the DfT by email that offering the statutory concessionary travel scheme meets its responsibilities under the DDA. The Council considers that the former scheme whereby one class of eligible disabled person (blind people) was singled out for special treatment was, in retrospect, unacceptable. It states that the only defensible alternative to the national scheme would be to provide all day travel to all classes of concessionaire at a considerable cost. The Council is only required to provide the national scheme and any enhancements are entirely at its own discretion.
30. The Council notified people about the National Concessionary Bus Pass Scheme by articles in Autumn 2007, Winter 2007 and Spring 2008 editions of its 'Serving You' newspaper which is delivered to all addresses in the borough together with press releases to the local media at key stages in the process. It states that the copy date for the Winter 2007 issue was too early to include the Council's decision in November 2007 but this was published on the Council's website. The Spring 2008 edition of 'Serving You' did explain what the terms of the national

concessionary bus pass were and that the national bus pass would replace any current bus passes that had been issued under the Hampshire Farepass Scheme. However, this edition was not published until 10 March 2008 and no mention was made of companion passes. In addition the DfT ran a national campaign encouraging new and existing concession holders to contact their local authority about the new scheme.

31. The Council has no specific procedures for hearing and considering exceptional cases but states that any person at any time can make a complaint or comment to the Council via their local councillor which will be investigated and remedial action taken where required. Councillors can raise the concerns formally if they consider a policy should be amended or a special case made. It states that a small number of complaints have been received (fewer than 0.1% of the passes in circulation) about the observation of national scheme hours and the removal of the companion pass. It states that until the Government chooses to fully fund the national scheme the Council sends a standard letter in response to each complaint explaining the reason for the Council's decision, which is purely financial.

## **B Mr Oliver and Mr Sutton v Chorley Borough Council**

### **Previous scheme**

32. Prior to the introduction of the new national scheme Chorley Borough Council, in common with other councils in Lancashire, operated a scheme whereby disabled people travelling before 9.30 am paid a maximum of 50p for their journey.

### **New scheme**

33. On 26 February 2008 the Council decided that the new national scheme would be implemented without additions.

### **Complaints**

34. The RNIB complained on behalf of Mr Oliver who is 58 years old and is registered blind and Mr Sutton who is partially sighted.
35. Mr Oliver was in receipt of his travel concession for over 30 years and does not recall there ever having been a restriction as to when he could travel. Mr Oliver uses his travel pass to travel to work and to hospital appointments before 9.30 am. He also relies on the bus to travel relatively short distances which other people might routinely walk as he has difficulty in negotiating his environment as a result of his sight loss.
36. Mr Sutton has had his travel pass for two years. He uses it to attend his local community centre for visually impaired people and hospital appointments. He cannot attend afternoon appointments because of caring responsibilities.

37. Both complainants have incurred additional expenditure which needs to be met from their Disability Living Allowance leaving them considerably less to spend on other disability related mobility costs. They also face the added difficulty of finding the correct bus fare, handing it to the driver, taking and checking change.
38. The RNIB says neither Mr Oliver nor Mr Sutton received formal notification of the decision to withdraw the discretionary travel scheme. Mr Oliver found out on approximately 24 March 2008 when he was informed by a bus driver that he would be charged full fare for journeys before 9.30 am from 1 April 2008. He contacted the Council to complain but no further action was taken. When he received his bus pass it was accompanied by some print information but Mr Oliver was unable to access this as a result of his sight loss. When Mr Oliver complained about the inaccessibility of the print information he received a version electronically which was not compatible with his access technology. He has still not received information about the new scheme in an accessible format.
39. Mr Sutton found out about the changes from a friend.

### **The Council's position**

40. This decision was approved as part of the Council's budget setting process in February 2008. On 26 February 2008 Members considered the report prepared by the Assistant Chief Executive and Statutory Finance Officer. Members decided that, in order to mitigate some of the financial risk, free travel before 9.30 am and travel after 11.30 pm would be stopped and the new national scheme would be implemented without additions.
41. Under the Council's constitution, Members may ask the Executive and the Council to reconsider the decision through either a 'call in' of the decision or through Overview and Scrutiny. In June 2008 such a request was made to the Executive Cabinet by the Scrutiny Committee in response to issues raised by a number of constituents with regard to the changes to the scheme.
42. The report to the Executive states that very few individuals were using the pre-9.30 option to travel. It also states that the new scheme is likely to result in additional costs to the Council and, to mitigate some of the financial risk, some of the current discretionary element of the scheme, ie free travel before 9.30 am and travel after 11.30 pm, will be stopped.
43. The minutes of the Overview and Scrutiny Committee on 23 June 2008 show that Members raised concerns that under the concessionary travel scheme disabled users were restricted to travelling after 9.30 am which put those who were working at a financial disadvantage. The Executive was requested to investigate the cost of allowing peak travel for all concessionary travel users and also for just disabled users.

44. Before the Executive and the Council could reconsider its position, the Council's partner, Lancashire County Council, agreed to fund the cost of reintroducing concessionary pre-9.30 am travel for disabled people and their companions with effect from the beginning of October 2008.
45. With regard to its responsibilities under the DDA, the Council states that the new scheme was a standard national scheme whereby the equality impact assessment would have been carried out at a national level. It was not possible for the Council to carry out a local assessment as no information was available with regard to the users of the pre-9.30 option.
46. The Council's disability equality scheme says that all new policies or policies under review will undergo an equality impact assessment as part of their development where the relevance is classed as 'High' or 'Medium' with respect to race, disability, gender and other factors.
47. The Council's consultation and participation strategy sets out the Council's commitment to consulting with the public on important issues. It also has a consultation and participation toolkit which is a quick reference guide to consulting the public. It refers to the Equality Forum through which the Council can consult with the equality groups identified in its equality scheme. It also refers to other local voluntary organisations for deaf, blind and disabled people in the area. The Council did not consult any of these groups.
48. With regard to the Council's arrangements for considering exceptional cases, individuals have the right to take up any issues with the Council by lobbying their local councillor or through the Council's complaints procedure. They also have the opportunity through a notice of motion to request the Council to reconsider its decision.
49. Lancashire County Council administers the scheme on behalf of the Lancashire districts. The changes were highlighted in Lancashire County Council's magazine, 'Vision', in March 2008 which is sent to all households in the borough. But the Council has provided no evidence it that took any additional steps to notify existing pass holders of the proposed changes.
50. The Council's view is that the decision was taken by all Lancashire councils collectively and, ultimately, the decision on the funding of the concessionary travel scheme was made by central Government, not local councils.

## **C Ms Kirby v Ribble Valley Borough Council**

### **Previous scheme**

51. Prior to the introduction of the new national scheme Ribble Valley Borough Council, in common with other councils in Lancashire, operated a scheme whereby disabled people travelling before 9.30 am paid a maximum of 50p for their journey.

### **New scheme**

52. The Council, in common with other Lancashire councils, decided to adopt the new national scheme without additions.

### **Complaint**

53. The RNIB complained on behalf of Ms Kirby who is registered blind. She has been in receipt of the travel concession for a number of years and uses her bus pass to attend doctors' and hospital appointments, to visit her family, for leisure activities and shopping. She has great difficulty in accessing the transport service before 9.30 am if she is required to pay for her bus travel because she has difficulty finding the correct money and giving, taking and checking change from the driver. She also has to hold on to her guide dog's harness whilst negotiating this process. In addition she is faced with additional expenditure which needs to be met from her Disability Living Allowance leaving her less to spend on other disability related mobility costs.
54. Ms Kirby says that she did not receive formal notification of the decision to withdraw the discretionary travel scheme. She only found out when she received her new bus pass in the post.
55. The changes were highlighted in Lancashire County Council's magazine, 'Vision', in March 2008 which is sent to all households in the borough. But the Council has provided no evidence that it took any additional steps to notify existing pass holders of the proposed changes.

### **The Council's position**

56. The Council says that, although the complainant has written to the Council, she has not complained through the Council's complaints process. Ms Kirby wrote to the Chief Executive and received a response from the Council's senior accountant.
57. The Council has a disability equality scheme which states that the Council will complete a disability impact assessment for all major policies, strategies and capital schemes developed by the Council.



58. The scheme also refers to the Ribble Valley Access Group which represents the general interests of those who may have difficulties accessing all services in the Ribble Valley including those with physical or mental disabilities.
59. The Council has a consultation strategy which states that a key objective is to allow people to have greater influence over the decisions which affect them. The strategy states that consideration should be given to consulting people who will be most affected by particular decisions. The Council has provided no evidence that it consulted service users or the Ribble Valley Access Group and says that the adoption of the scheme was handled by Lancashire County Council.
60. Lancashire County Council has now altered its policy in relation to concessionary travel and reintroduced the 50p pre-9.30 am concessionary fare with effect from October 2008.

## **D Ms Parkes v South Ribble Borough Council**

### **Previous scheme**

61. Prior to the introduction of the new national scheme South Ribble Borough Council, in common with other councils in Lancashire, operated a scheme whereby disabled people travelling before 9.30 am paid a maximum of 50p for their journey.

### **New scheme**

62. On 5 March 2008 the Council decided that the concessionary travel scheme should be operated on the basis of the statutory scheme with limited additions being Community Transport, the Blackpool Tramway and the Knott End Ferry.

### **Complaint**

63. The RNIB complained on behalf of Ms Parkes who is registered blind. She was a nurse but had to give up work five and a half years ago because of her sight problem. She has been in receipt of the travel concession during this time. She uses her bus pass to get to work, attend hospital appointments, visit her family and friends, for leisure activities and shopping. In common with the other complainants, she has a great deal of difficulty in accessing the transport service if she is required to pay for her bus travel as she has difficulty finding the correct money, giving, taking and checking change and finding her return tickets. In addition, she is faced with additional expenditure which needs to be met from her Disability Living Allowance. Even prior to the change in the concessionary travel scheme Ms Parkes, along with many other blind people, was struggling to manage on her Disability Living Allowance and her independence was being taken from her as a result.

64. Ms Parkes did not receive formal notice of the decision to withdraw the discretionary travel scheme. She only found out when she received her new bus pass.

### **The Council's position**

65. A lengthy report was taken to Cabinet which decided that, in light of the anticipated budgetary pressures arising from the expected shortfall in Government funding for the new scheme, the concessionary travel scheme should be operated on the basis of the statutory scheme. The matter was then referred for information to full Council on 5 March 2008 and further discussion took place there.
66. The report to the Cabinet does not provide any information with regard to Members' duties under the DDA. But the Council argues that the Government carried out its own equality impact assessment and that extensive consultation for the new scheme was carried out by the DfT. Responses were received from interested parties including the Guide Dogs for the Blind Association and the Joint Committee on Mobility of Blind and Partially Sighted People. The Council concludes that proper consideration to the needs of people in similar circumstances to that of the complainant was given by the DfT.
67. The Council has an equality, diversity and community cohesion strategy incorporating its comprehensive equality scheme which includes a policy on equality impact assessments. This says that all new policies and policies for review must be screened at an early stage to identify whether an equality impact assessment will need to be carried out.
68. The Council has a consultation guide which encourages consultation but the Council did not consult service users before making its decision relying upon the consultation carried out by the Government in relation to the national scheme.
69. The Council issued a press release concerning the new scheme on 7 February 2008 and also published an article in the Spring 2008 edition of its 'Forward' magazine which is delivered to all houses in the borough. The changes were also highlighted in Lancashire County Council's newspaper, 'Vision', in March 2008 which is delivered to every home in Lancashire.
70. The Council has no specific arrangements to deal with exceptional cases but is willing to consider any representations and one of its corporate directors in conjunction with the appropriate Cabinet Member would have delegated authority to deal with any such applications. The Council has considered no exceptional cases since the introduction of the new scheme.
71. Lancashire County Council has reintroduced concessionary travel before 9.30am.
72. The Council states that the initial decision to adopt the national scheme with limited additions was in no small measure a consequence of Lancashire County

Council's then decision (later rescinded) to cease contributing to the cost of any concessionary services.

## **E Mr Hunt v East Dorset District Council**

### **The previous scheme**

73. Prior to the introduction of the new national concessionary travel scheme on 1 April 2008 East Dorset District Council operated a concessionary travel scheme which consisted of free all day travel for registered blind or partially sighted residents and other concessionary groups could travel at half the standard fare at any time. The Council also issued a companion pass to eligible residents.

### **New scheme**

74. On 25 February 2008 the Council decided to offer only the national scheme with one addition being the issue of companion passes.

### **Complaint**

75. The RNIB complained on behalf of Mr Hunt, who is partially sighted. Mr Hunt had been in receipt of his free all day travel pass since 2001. He used his pass to attend hospital appointments before 9.30 am. He was faced with additional expenditure which had to be met from his Disability Living Allowance.
76. Mr Hunt did not receive formal notice of the decision to withdraw the discretionary travel scheme. He learned of it from an article in his local paper about Council spending cuts entitled "Council set to bin free rubbish bag".

### **The Council's position**

77. The Chief Executive prepared a report which was considered by full Council on 19 November 2007. The minutes of the meeting show that Members discussed the scheme in detail, particularly in relation to providing concessionary fare travel prior to 9.30 am. A proposal to include pre-9.30 am travel was made by one Member and seconded. But Members voted against this and resolved that the concessionary fares scheme should be based on the national scheme with the one addition of granting companion passes for those whose disability means they cannot travel alone. It was, however, accepted that this decision would be reviewed in light of costs as they became known during the year. The issue was discussed again at the full Council meeting on 25 February 2008 and Members voted to offer only the national scheme with the addition of a companion pass in the circumstances above.
78. A meeting of the Policy and Resources Committee on 29 October 2008 considered a report of the Chief Executive recommending extending the travel concession to cover all day travel in light of public dissatisfaction and difficulties

caused by the restriction on travel before 9.30 am for both the public and the bus operators. The recommendations were agreed and the extended scheme commenced on 1 December 2008.

79. The Council has a disability equality scheme which states that the equality implications of all new policies must be assessed “enabling the Council to take account of the needs, circumstances and experiences of those affected by the policies.” I have seen no evidence that the Council carried out such an assessment in this case.
80. The Council did not consult service users but has no consultation strategy that covers such cases.
81. The Council wrote to existing pass holders in September 2007 explaining that a new scheme would be starting in April 2008 and requesting them to provide a new photograph. The letter did not mention that pass holders would no longer be able to travel free before 9.30am. Pass holders were sent a copy of a leaflet containing further information with their new bus pass.

## **F Ms Milton v Mid Devon District Council**

### **The previous scheme**

82. Mid Devon District Council joined the Devon wide Concessionary Fares Partnership to deliver the half fare concessionary travel scheme under the Transport Act 2000. This partnership ended following the change to a national scheme in April 2008.

### **New scheme**

83. On 7 June 2007 the Council decided to set up the national scheme without additions.

### **Complaint**

84. The RNIB received a complaint from Mrs Milton on behalf of her son who is deafblind with severe learning disabilities. Mr Milton found his companion pass invaluable as he is unable, as a result of his disability, to travel unaccompanied. He used it to attend hospital appointments, for social events, to meet friends and for days out. Without the companion pass Mr Milton is excluded from accessing his community.
85. Mrs Milton says she did not receive formal notification of the decision to withdraw the discretionary travel scheme. She only learned of the decision when she received the renewal forms for her son's new bus pass in October 2007. The Council argues that six months is sufficient notice for Mrs Milton to make alternative arrangements.

86. The Council wrote to Mr Milton and other pass holders in November 2007 explaining that the current scheme would end on 31 March 2008 because of the introduction of the new national scheme. An information sheet was attached explaining the differences between the two schemes together with an application form which Mr Milton signed on 1 January 2008 and returned to the Council. The application form stated that there would be no companion pass.
87. Mrs Milton approached her district councillors but to no avail and there is no provision/procedure to request exceptional consideration.

### **The Council's position**

88. A new partnership was set up to implement and manage the new scheme. Mid Devon District Council does not have the infrastructure to manage the scheme and therefore agreed to work in partnership with the remaining seven Devon authorities to form a new Devon Concessionary Bus Travel Partnership administered by Devon County Council.
89. The partnership discussed the scope of the new scheme and, due to financial uncertainties, the need to run the scheme within the grant paid by Government. The decision was made to set up the national scheme and this decision was endorsed at Mid Devon District Council's Community Services Committee on 7 June 2007 which considered a report by the Director of Community Services.
90. Mid Devon District Council's first disability equality scheme was published in May 2007. It stated that the Council would agree an impact assessment methodology for use across all service areas by May 2007. Mid Devon District Council made its decision to adopt the national scheme on 7 June 2007 but there is no evidence that it carried out a disability impact assessment prior to reaching this decision. The Council states this is because the papers for the June 2007 Committee meeting would already have been in circulation whilst the equality scheme was being agreed in May 2007.
91. In response to a draft of this report, the Council states that the DfT had consulted with the Disabled Persons Transport Advisory Committee which is a statutory body whose role it was to advise Government on transport needs for disabled persons. It was therefore reasonable to rely on the Government's own impact assessment which created the eligibility standards used by the partnership to inform its decision making. It states that its own disability equality scheme was the blueprint document of what was going to happen and agreed an action plan.
92. Residents were not individually consulted but Members represent their constituents on this matter. The Council had no consultation policy at the relevant time. The Council believes it has met its responsibilities under the DDA.
93. The Council has considered no exceptional circumstances.

94. The Council's view is that consultation, notice and impact assessment were all carried out as part of the legislative process and there was therefore no need to rehearse these factors locally once the legislation was in place. In the Council's view, it was wholly reasonable to rely on the Government's findings. It took the view that it was implementing legislation rather than making a policy decision.
95. The Council states that it considered the issue of additional discretions at the meeting of the Community Services Committee on 7 June 2007 and, after due consideration, Members resolved to remit the matter to the existing Devon Partnership. In doing so, it was following Government advice that it should work in a partnership manner with other authorities and agencies in order to take advantage of shared resources and achieve improved efficiency and the wider view. The Council argues that it is therefore inappropriate to target individual councils when the key decisions which have impacted on complainants were taken by the Government on the one hand and the Partnership on the other.
96. The Council states that the previous scheme was unsustainable and unaffordable and this information was relayed to the Government with regard to the level of future funding required by the Devon authorities from the Devon wide Partnership. The cost of administering the national scheme is reimbursed by the Government for the eligible pass holders but this does not include a sum for companion passes.

## **G Mr Drake v Medway Council**

### **Previous scheme**

97. Prior to the introduction of the new national concessionary travel scheme on 1 April 2008 Medway Council operated a discretionary travel scheme which consisted of:
  - A charge of 20p on all disabled and elderly persons' travel per day regardless of how many journeys were made during the day or night throughout Medway and Maidstone;
  - A companion pass which entitled the holder and a companion to travel for 30p per day regardless of the number of journeys made.

### **New scheme**

98. On 17 January 2008 the Council decided to adopt the national scheme with the addition of free travel between 9am and 9.30 am and the provision of a companion pass for an annual charge of £75.

## **Complaint**

99. Mr Drake contacted the RNIB to complain about the Council's withdrawal of the free companion pass and its decision to charge £75 per annum for the issue of such a pass. Mr Drake can no longer travel free with a companion.
100. Mr Drake complained that the Council, in reaching the decision to adopt the new scheme without the addition of a free companion pass, gave inadequate consideration to the impact upon residents in a similar situation to him. Mr Drake is 59 years old and is registered both deaf and blind. He also suffers from angina, a heart condition and arthritis. He had been in receipt of a free companion pass for eleven years.
101. Prior to the changes Mr Drake found his companion pass invaluable as he experiences difficulty in travelling without a companion in certain situations and at certain times. He used his companion pass to attend hospital and doctor's appointments and to travel in areas with which he was unfamiliar where he needed a guide and help with communication.
102. Mr Drake is in receipt of Pension Credit, Incapacity Benefit and Disability Living Allowance. The mobility component of his Disability Living Allowance was insufficient to cover his mobility costs before the introduction of the additional £75 charge for a companion pass. He has been unable to afford this charge and his access to his community is, at times, severely restricted as he can no longer take a companion on journeys free of charge.
103. Mr Drake says he was unaware of the withdrawal of the free companion pass until he received his renewal form in March 2008. He was also unaware of the fact that the Council reduced the charge for the companion pass to £30 per annum from 1 April 2009, until he was notified of this by the RNIB on receipt of the draft of this report.

## **The Council's position**

104. On 8 January 2008 the Council's Cabinet met to consider how the Council should implement the new national scheme. Members considered a report from the Director of Regeneration and Development which set out details of the scheme, the additional options and financial implications. The Cabinet decided to adopt the national scheme with the addition of free travel between 9am and 9.30 am. It also decided to issue companion passes subject to a) a charge of £75 per annum and b) a requirement that it only applied to journeys starting in the Medway Council area.

105. On 17 January 2008 full Council approved the setting of the charge for companion passes alongside the introduction of the national scheme. (Approval of fees and charges is a matter for full Council).
106. The reports to the Cabinet and to full Council do not provide any information with regard to Members' duties under the DDA. But the Council states that, despite the charge for issuing the companion pass, it sees it as a positive benefit for people with disabilities which is not available to other members of the community and therefore considers that the introduction of the charge does not conflict with its obligations under the DDA.
107. The Council has a disability equality scheme which states that consultation with disabled people is essential in all its work. It has a number of consultation mechanisms to engage its disabled residents including service based user groups such as the Medway Access Group. But it did not consult any of these groups about the proposals. The disability equality scheme does not explain how the Council will carry out disability impact assessments.
108. The Council states that since reaching its decision on the new scheme it has become the Council's normal practice to include a diversity impact assessment in relevant Council and Cabinet reports to ensure the full impact of such changes are given due consideration.
109. The Council also has a consultation policy but existing pass holders were not consulted about the proposals.
110. The Council issued a press release on 29 February 2008 highlighting the new scheme. Individual companion pass holders, including Mr Drake, were notified of the new arrangements when they were sent their renewal application forms by letter dated 5 March 2008.
111. The Council states the Chief Executive is prepared to hear exceptional cases but considers that, as many of those who depend on the ability to travel with a companion have similar circumstances, it would be difficult to find a fair method of identifying a need that is truly exceptional. The only request to consider waiving the charge considered by the Chief Executive was from Mr Drake but the Chief Executive did not feel able to support his request. The Council has, in a small number of cases, agreed to different payment arrangements for pass holders who have been unable to find the full £75 fee in a single payment.
112. The Council reduced the charge for the companion pass to £30 per annum from 1 April 2009.

### **Lancashire County Council's position**

113. In Lancashire the concessionary travel scheme is operated as a pooled funding arrangement and is administered by Lancashire County Council on behalf of the



District Councils together with Blackburn with Darwen Borough Council and Blackpool Borough Council.

114. The County Council has agreed to take on the co-ordinating role but states that it is the other local authorities who are the relevant Travel Concession Authorities (TCAs) for the purposes of the legislation. The decision to adopt the national policy was taken by the TCAs who determine the scope of travel concessions.
115. A number of concessions were withdrawn by TCAs including the maximum 50p fare for disabled pass holders during peak times. This decision was taken by TCAs on the basis that they were concerned that they would not otherwise be able to finance a significant deficit that was projected and which they would have had to meet in line with the pooling agreement. The withdrawal of this concession resulted in a significant number of complaints being received by the County Council and TCAs. The County Council therefore took the decision that it would fund the reintroduction of the 50p fare for journeys before 9.30am on weekdays by disabled passengers with effect from 5 October 2008.

#### **RNIB's view**

116. The RNIB says that the Councils' decisions appear to have been taken without consultation; with no assessment of the impact of the decision on the groups or individuals concerned; with little or no notice and without consideration of the Councils' duty under the DDA to promote disability equality.

#### **No consultation**

117. The RNIB argues that where an individual has previously been in receipt of a benefit, it is unlawful for the Council to withdraw it without allowing the individual an opportunity to make representations. It says that an individual's reliance on a benefit gave rise to a legitimate expectation that they would be consulted over the withdrawal of that service.
118. The RNIB says that the decision making processes used by the Councils in this report to remove their discretionary concessionary travel schemes were flawed in that they did not consult with those in receipt of the discretionary travel concession before withdrawal and did not assess the impact of the decision on the groups or individuals affected.
119. Before deciding whether to implement the new national scheme with or without extending the operating hours the Councils failed to consult those people who would be affected by the loss of benefits under the Councils' existing concessionary travel schemes and other interested parties. This would have enabled them to find out the views of those affected, to identify the impact of their policies on the groups and individuals affected, to generally identify problems arising from the proposed changes and to involve those affected in local decision making.

120. The result of the lack of consultation was that those affected by the decision were not even aware that there was a proposal to end the discretionary travel scheme, let alone that it was being actively considered.

### **Fettering of discretion**

121. Councils have discretion under the Transport Act 1985 to issue travel concessions. The RNIB is concerned that the Councils in this report have fettered their discretion by applying a blanket policy with no consideration being given to individual circumstances or the circumstances of any particular group.

### **Inadequate notice**

122. The RNIB states that none of the Councils in this report provided the recipients of the discretionary pass with adequate notice of their intention to withdraw the discretionary travel scheme. Some recipients only became aware of the change when they received their renewal documentation, others only when they received their bus pass.

### **Disability Equality Duty**

123. The RNIB says there is no evidence that any of the Councils referred to in this report considered their responsibilities in relation to the disability equality duty when deciding to withdraw the discretionary scheme they previously operated. None of the Councils appear to have carried out, or even considered carrying out, an impact assessment despite the fact that the decision primarily affected disabled people. And there is little evidence that the decision makers were aware of their responsibilities under the DDA when taking the decision.
124. The disability equality duty requires public authorities to have due regard to equality outcomes. In particular, Councils have a duty to promote equality of opportunity between disabled persons and other persons and to take steps to take account of disabled persons' disabilities even where that involves treating disabled persons more favourably than other persons.
125. The RNIB states that the complainants accept that the national statutory guidance has been subject to the required consultation and, consequently, the DfT has complied with its statutory duty pursuant to the provisions of the DDA. However, this is in respect of a national minimum standard. The relevant statutory provision, the Concessionary Bus Travel Act 2007, did not withdraw a local authority's discretionary power to offer a more favourable concessionary travel scheme and did not absolve a local authority from its discrete statutory duties pursuant to the DDA.
126. The RNIB considers that it remained a statutory duty and incumbent on each Council, as a public authority, when deciding to change a local provision to have lawfully consulted, to have assessed the impact of the consequences of that decision and to be properly aware of its statutory duties in respect of the

promotion of equal opportunity for disabled people at the point that the decision is made. It argues that the very essence of the residual local authority discretion to provide a more favourable concessionary travel scheme is that councils can be responsive to the local needs of the communities they serve. The distinction between national and local provision is important as local communities, conditions and transport facilities vary enormously. It is therefore essential that a local authority assesses the impact of a policy change on its own community and promotes equal opportunity for disabled people in accordance with its statutory duties. The RNIB therefore considers that the Councils are acting unlawfully in relying on the DfT's compliance with the DDA in their failure to comply with their own discrete statutory duties.

127. The RNIB refers to the case of *R (on the application of Chavda) v Harrow London Borough Council*<sup>6</sup> (see paragraph 8) and says there is no evidence that the Councils explicitly considered their disability equality duty in any of the cases referred to in this report.
128. The RNIB says that there is a history of blind people being entitled to certain travel concessions where other disabled people are not. This is because blind people face additional practical difficulties in travelling (eg difficulty in locating their fares and taking change). Blind people are also not entitled to higher rate Disability Living Allowance mobility component in contrast to many other disabled people, such as wheelchair users.
129. In addition, the RNIB is concerned that in Lancashire the policy of withdrawing the discretionary travel scheme across the county was effectively made at a Lancashire Chief Executives and Leaders' meeting. The RNIB is concerned that the decisions then taken by individual Councils may have been little more than a rubber stamp. Chorley Borough Council refutes this argument stating that the relevant decision making bodies are the individual Councils and not the Leaders' meeting referred to.
130. Although the Lancashire Councils and East Dorset District Council have reintroduced concessionary travel prior to 9.30 am, the RNIB believes that the complainants should receive compensation in respect of the financial losses they incurred during the period when they were not entitled to concessionary travel before 9.30am.
131. With regard to Chorley Borough Council, the RNIB states that it is wholly inadequate for the Council not to carry out an assessment because no local information is available. It also argues that it is inadequate for the Council to rely on notice in a magazine which may be in an inaccessible format to those partially sighted and blind persons affected by the change in policy. The Council has

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6 *R (on the application of Chavda v Harrow London Borough Council* [2007] EWHC 3064

provided no evidence that it took any additional steps to notify existing pass holders of the proposed changes.

132. With regard to Ribble Valley Borough Council, the RNIB states that it is inadequate for the Council to rely on notice in a magazine which may be in an inaccessible format to those partially sighted and blind persons affected by the change in policy. The Council has provided no evidence that it took any additional steps to notify existing pass holders of the proposed changes.
133. It states that the Council relies on the DfT's equalities assessment in respect of the national scheme and upon Lancashire County Council's decision to absolve itself of its statutory duty to impact assess a change in Council policy. The RNIB argues that each public authority has a discrete statutory duty and that the Council has failed to discharge this duty in that it has not lawfully decided its decision to change its local policy.
134. With regard to South Ribble Borough Council, the RNIB reiterates its comments concerning the inaccessibility of council press statements and magazines and the failure of the Council to take any additional steps to notify existing pass holders of the proposed changes.
135. In relation to Medway Council, the RNIB says that it is concerned that the Council may not have the power to make a charge for the companion pass and whether it is able to show that the charge is fair and reasonable. Medway Council states that the ability to offer discounted travel for companions is a discretionary enhancement to the statutory English national scheme, permitted by the Transport Act 1985. This is supported by the guidance to local authorities issued by the DfT. Further, the Council has the power to charge for discretionary services under Section 93 of the Local Government Act 2003. It states that it is not uncommon for a charge to be made for a companion pass and eight of the thirteen Councils in the Kent and Medway scheme make such a charge.
136. The RNIB also states that it is a feature of the Medway scheme that those who have a companion pass are not able to travel independently on their pass even though they have a national entitlement to a free concessionary pass to allow them to travel. Whilst this does not currently affect Mr Drake as he no longer has a companion pass, this policy may well affect a number of other disabled individuals in Medway. The Council states that, although this was formerly the arrangement, it is not compatible with the English national concession whereby pass holders are able to travel throughout England while companion travel, being a discretionary addition, is only available by local arrangement. Consequently, companion pass holders are now entitled to travel without a companion and have been since the English scheme was introduced in April 2008.
137. The RNIB argues that Medway Council has provided no evidence that it undertook consultation with any individuals or bodies representing equality groups

or an impact assessment or took any steps to notify existing pass holders of the proposed changes prior to their implementation.

138. With regard to Havant Borough Council, the RNIB states that the Council accepts that its Autumn 2007 edition of 'Serving You' did not contain the Council's November 2007 decision and the Spring edition was too late for informed consultation. The RNIB considers that it was reasonable to expect that this notification should have been made available in a format accessible to bus pass holders. It considers that it is an inadequate response to rely on the national campaign regarding the national scheme.
139. With regard to Mid Devon District Council, the RNIB states that each of the seven District Councils that have formed the new Devon Concessionary Bus Travel Partnership have made their own discrete decisions in respect of the exercise of discretion regarding concessionary travel passes. Devon County Council was not involved in those decisions.
140. The RNIB argues that Mid Devon District Council, as a public authority, has a discrete and several statutory duty and has failed to provide any evidence that it undertook consultation or an impact assessment of the proposed changes to policy prior to their implementation.
141. It is difficult to quantify the exact financial impact upon each complainant as some of them may have chosen not to travel on some occasions when their journey was not covered by the statutory scheme or delayed their journeys so as to come within the concessionary period.

## **Conclusion**

142. I set out below first my conclusions which relate to all the Councils I investigated followed by specific conclusions which are unique to each Council. I am grateful to Havant Borough Council, Ribble Valley Borough Council, South Ribble Borough Council, Chorley Borough Council, East Dorset District Council and Medway Council for their acceptance of my recommendations. But I have decided to issue this report against all Councils I investigated because I consider there are issues of wider public interest arising from my investigation.

## **General conclusions**

143. All the Councils in this report operated local concessionary travel schemes until 1 April 2008. In my view, when they decided not to offer those schemes after 1 April 2008 they should have considered their duties under the DDA. The fact that the DfT had concluded that the national bus pass scheme was compliant with the DDA may have been a relevant consideration, but it was not the only one. The Council's own duties under the DDA are an important relevant consideration. Councils must also properly consider their obligations in relation to the general equality duty under S49(A) of the DDA when making the decision on whether or

not to continue to provide a more generous concessionary fare scheme following the implementation of the national scheme on 1 April 2008. And they must indicate that they have done so. None of the Councils I have investigated has been able to demonstrate that they took into account all relevant considerations at the time they made the decision not to continue with the local scheme. This was maladministration.

144. Under the Transport Act 1985, from which local authorities derive the power to operate local concessionary schemes, there is no duty to consult service users. But, where the Council has its own policy on consultation it is maladministration for the Council to fail to comply with that policy.
145. It seems to me that councils have the right to establish a policy to determine how it will confer benefits of this kind. But policies must be implemented in a way that allows for individual circumstances to be taken into account. There must be a mechanism that enables the Council to consider why, in special circumstances, the policy should be varied to meet the needs of individuals affected by it. None of the Councils here had such a mechanism. This was maladministration.

## **Additional conclusions**

### **Havant Borough Council**

146. The Council asserts that it consulted its Disability Access Group about the proposed policy change and that the issue of Members' duties under the DDA was raised in the Members' seminar. There are no formal minutes though the Council has sent me a copy of an informal note taken by one of the attendees. The Council has not satisfied me that it did enough to consider its duties under the DDA before reaching its decision.
147. I welcome the fact that the Council has now changed its procedures so that minutes are taken of meetings and seminars when the subject matter under discussion is likely to have a bearing on a policy decision.
148. I am satisfied Mrs Harper and Mr Rogers did not receive prior notification of the proposals. I accept that the Council informed residents that the national bus pass scheme was going to be implemented in its Autumn and Winter 2007 newsletters, but it did not tell them about its decision to discontinue the local scheme until the Spring newsletter which was published on 10 March 2008. The newsletter did not explain that existing additional concessions would be withdrawn. In addition, there was no mention of the withdrawal of the companion pass except in the press release dated 9 February 2008.

## **Injustice**

149. I have considered how the fault identified above affected Mrs Harper and Mr Rogers. They are left with a justified sense of outrage that this issue was not adequately considered by the Council under its DDA equality duty. They have also been put to unnecessary inconvenience and may have incurred unnecessary additional expense as a result and they lost the opportunity to influence the process as a result of the Council's failure to inform them of the change.

## **Remedy agreed**

150. To remedy the above injustice the Council has agreed to pay £100 compensation to each complainant. It has also agreed to reconsider the question of whether it should put in place additional concessions to those provided under the statutory scheme.

## **Chorley Borough Council**

151. The Council's disability equality scheme says that all new policies or policies under review will undergo an equality impact assessment where the relevance is classed as High or Medium with respect to disability and other factors. The new travel scheme was of high relevance with respect to disability but there is no evidence that the Council either considered an equality impact assessment or concluded there was no need for one because the DfT had already considered disability equality. This was maladministration.
152. The Council failed to comply with its own consultation and participation strategy in that no consultation was carried out with service users. The Council has an Equality Forum through which it can consult with the equality groups identified in its equality scheme. Its failure to consult this Forum was maladministration.
153. Mr Oliver and Mr Sutton say they received no formal notification of the changes. The changes were highlighted in Lancashire County Council's magazine, 'Vision', in March 2008 which is sent to all households in the borough. But this did not state that the more generous local concession was being lost. The Council has provided no evidence that it took any additional steps to notify existing pass holders of the proposed changes. This was maladministration.

## **Injustice**

154. The Council has now reintroduced pre-9.30 am concessionary travel for disabled people and their companions. But Mr Oliver and Mr Sutton are left with a justified sense of outrage that this issue was not adequately considered by the Council at the outset in terms of their position under the DDA and the failure to do so may have put Mr Oliver and Mr Sutton to additional expense and inconvenience as a result.

155. The complainants also suffered further outrage and lost opportunity to influence the process by the Council's failure to consult them about the proposals and its failure to provide them with effective notification of the changes.

### **Remedy agreed**

156. To remedy the injustice to Mr Oliver and Mr Sutton the Council has agreed to pay £100 compensation to each of them.

### **Ribble Valley Borough Council**

157. The Council has not responded in detail to my enquiries because it states that Ms Kirby has not made a formal complaint through the Council's complaints procedure. However Ms Kirby did complain in writing to the Council on 3 April 2008. She received a response indicating that the Leaders of the Council were meeting to discuss the issue at the beginning of May. On 28 April Ms Kirby received a letter from the Council's Senior Accountant stating that the Leaders of the Council had decided to adopt the statutory scheme without additions as they did not wish to incur any additional costs. On 12 May 2008 she received a further letter stating that the Leaders of the Council had decided not to change the 9.30am start time.
158. My investigator notified the Council of Ms Kirby's complaint on 11 September 2008 and the Council was therefore aware of it. I see no reason why I cannot proceed to investigate the complaint now.
159. The Council's disability equality scheme states that the Council will complete a disability impact assessment for all major policies, strategies and capital schemes. I have seen no evidence that it completed one here. This was maladministration.
160. No prior consultation was carried out with service users. Instead, the Council relied upon the consultation carried out by the Government. This was a breach of the Council's consultation strategy and was maladministration.
161. Ms Kirby was given no prior notice of the new scheme. The article in 'Vision' did not explain that the more generous local concession would be lost. Ms Kirby only became aware of this when her bus pass arrived through the post. The Council took no additional steps to notify existing pass holders of the proposed changes. This was maladministration.

### **Injustice**

162. The Council has now reintroduced pre-9.30 am concessionary travel for disabled people and their companions. But Ms Kirby is left with a justified sense of outrage that this issue was not adequately considered by the Council at the outset in terms of her position under the DDA and may have been put to unnecessary expense and inconvenience.



163. The complainant also suffered further outrage and lost opportunity to influence the process by the Council's failure to consult her about the proposals or provide her with effective notification of the changes.

### **Remedy agreed**

164. To remedy the injustice to Ms Kirby the Council has agreed to pay her £100 compensation.

### **South Ribble Borough Council**

165. The Council argues that the decision on whether to adopt the statutory scheme with or without additions was taken by Lancashire County Council and is not the Borough Council's responsibility. I do not accept this argument. It was for South Ribble Borough Council to decide whether to accept Lancashire County Council's proposal.

166. The Council's policy on equality impact assessments states that all new policies and policies for review must be screened to identify whether an equality impact assessment will need to be carried out. The Council neither carried out an equality impact assessment nor concluded there was no need for one because the DfT had already considered disability equality.

167. No consultation was carried out with service users prior to reaching a decision. This was a breach of the Council's own policy and was maladministration.

168. Mrs Parkes says she was not given prior notice of the new scheme. But, in addition to the article in the County Council's newspaper 'Vision', the Council issued a press release on 7 February 2008 and also published an article in the Spring 2008 edition of its 'Forward' magazine which is delivered to all houses in the borough. This article confirms that the new scheme will provide for free travel for pensioners and disabled people between 9.30am and 11pm on weekdays and all day at weekends. I am satisfied on the evidence that the Council did take adequate steps to inform service users of the changes.

### **Injustice**

169. I have considered how the fault identified above affected Mrs Parkes. The Council has now reintroduced pre-9.30 am concessionary travel for disabled people and their companions. But Mrs Parkes is left with a justified sense of outrage that this issue was not adequately considered by the Council at the outset under the DDA and she may have been put to additional expense and inconvenience as a result.

170. The complainant also suffered further outrage and lost the opportunity to influence the process by the Council's failure to comply with its policy and consult her about the proposals.

### **Remedy agreed**

171. To remedy the injustice to Mrs Parkes the Council has agreed to pay her compensation of £100.

### **East Dorset District Council**

172. The Council's disability equality scheme states that the equality implications of all new policies must be assessed. But I have seen no evidence that this was done here.

173. No consultation was carried out with service users prior to reaching a decision but this was not maladministration because the Council had no consultation policy which was applicable here. The Council has now introduced new procedures that will require an equality impact assessment to be undertaken on these types of issues in the future as part of the early considerations. These are likely to identify the need to consult with certain groups and/or their representative organisations.

174. The Council wrote to existing pass holders including Mr Hunt in September 2007 explaining that a new scheme would be starting in April 2008 and requesting them to provide a new photograph. The letter did not mention the fact that pass holders would no longer be able to travel free before 9.30am. Pass holders were sent a copy of a leaflet containing further information with their new bus pass but they were not given this information before their existing passes expired. In my view this failure to notify was maladministration.

### **Injustice**

175. The Council has now reintroduced pre-9.30 am concessionary travel for disabled people and their companions. But Mr Hunt is left with a justified sense of outrage that this issue was not adequately considered by the Council at the outset in terms of his position under the DDA and he may have been put to additional expense and inconvenience as a result.

176. The complainant also suffered further outrage and lost opportunity to influence the process by the Council's failure to consult him about the proposals and its failure to provide him with effective notification of the changes.

### **Remedy agreed**

177. To remedy the injustice to Mr Hunt the Council has agreed to pay him compensation of £100.

## **Mid Devon District Council**

178. The Council's first disability equality scheme was published in May 2007. The Council made its decision to adopt the national scheme on 7 June 2007 and I do not consider it reasonable to expect it to have carried out a disability impact assessment prior to this.
179. No consultation was carried out with service users prior to reaching a decision but this was not maladministration because the Council had no consultation policy which was applicable here.
180. The RNIB says Mr Milton was not given prior notice of the new scheme. But his mother learned of the decision in October 2007 when she received the renewal forms for her son's new bus pass. The Council wrote to Mr Milton and other existing pass holders in November 2007 explaining that the current scheme would end on 31 March 2008 because of the introduction of the new national scheme. An information sheet was attached explaining the differences between the two schemes together with an application form which Mr Milton signed on 1 January 2008 and returned to the Council. The information sheet stated that there would be no concession for companions under the new scheme. I am therefore satisfied that the Council gave adequate notice of the change to the scheme and there was no maladministration in this regard.

## **Injustice**

181. However, as a result of the maladministration identified in paragraphs 143 to 145 above, Mr Milton is left with a justified sense of outrage that this issue was not adequately considered by the Council at the outset in terms of his position under the DDA. He may have also been put to inconvenience and additional expense as a result.

## **Recommendation**

182. To remedy the injustice I have identified at 181 above, I recommend that the Council reconsiders the question of whether it should put in place additional concessions to those provided under the statutory scheme. I also recommend that it pays £100 compensation to Mr Milton in recognition of his outrage that this matter was not adequately considered by the Council at the outset and the additional expenses and inconvenience he may have been put to.

## **Medway Council**

183. The Council's disability equality scheme states that consultation with disabled people about matters which affect them is essential. It has a number of consultation mechanisms to engage disabled residents, including service based user groups. It also has a consultation policy. But it did not consult any of those groups or existing pass holders before reaching its decision. This was maladministration.

184. Mr Drake says he was not given prior notice of the new scheme. The Council issued a press release in February 2008 explaining that a new scheme would be starting in April 2008. This appears to be the only notification given by the Council before renewal letters were sent to pass holders in March 2008. In my view this was inadequate notification and maladministration.

### **Injustice**

185. I have considered how the fault identified above affected Mr Drake. He is left with a justified sense of outrage that this issue was not adequately considered by the Council at the outset in terms of his position under the DDA. Mr Drake may have also been put to inconvenience and additional expense as a result.

186. Mr Drake also suffered further outrage and lost opportunity to influence the process by the Council's failure to provide him with effective notification of the changes.

### **Remedy agreed**

187. To remedy the injustice I have identified at 185 and 186, the Council has agreed to pay Mr Drake £100 compensation. In addition, the Council has agreed to reconsider the question of whether it should put in place additional concessions to those provided under the statutory scheme.

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**24 September 2009**