

ADJUDICATION AND REVIEW COMMITTEE SUPPLEMENTARY AGENDA

11 April 2013

The following reports are attached for consideration and is submitted with the agreement of the Chairman as an urgent matter pursuant to Section 100B (4) of the Local Government Act 1972

6 CHANGES WITHIN STAGE THREE OF THE CORPORATE HEARINGS PROCESS
(Pages 1 - 8)

Members are invited to consider whether to adopt the IAP as a permanent part of the Stage Three process and propose amending the Constitution to incorporate that.

7 CHANGES BY THE LOCAL GOVERNMENT OMBUDSMAN AFFECTING HAVERING (Pages 9 - 12)

This report is to inform the Committee about recent changes affecting LGO activity in the borough and to review the year 2012/13.

Ian Burns
Acting Assistant Chief Executive

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ADJUDICATION & REVIEW COMMITTEE

11 April 2013

Subject Heading:

**CHANGES WITHIN STAGE THREE OF
THE CORPORATE HEARINGS
PROCESS**

CMT Lead:

Ian Burns, Acting Assistant Chief
Executive

Report Author and contact details:

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Policy context:

Review of the Corporate Hearings
process in order to ensure good practice
is maintained

Financial summary:

The objective of these revisions would be
to make the process more economical
and reduce delay

**Has an Equality Impact Assessment
(EIA) been carried out?**

Not required.

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input checked="" type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

SUMMARY

The Stage Three of the Council's Corporate Complaints process requires a hearing to be held before a panel of Councillors. This is costly in terms of officer and Member time and administrative support.

In 2009 the Committee adopted – by way of experiment – an “assessment” phase (taken from the process used by the former Standards Committee) to filter out hearing requests which had no merit.

Since the inception of the Initial Assessment Panels (IAPs) the work of the Committee in discharging its responsibilities under the Constitution has become

more effective, speedier and has saved the Council considerable expense by preventing inappropriate cases from becoming full hearings and allowing through cases where Councillors could contribute positively to the outcome.

The purpose of this report is to provide Members with a review of the process which links the work of the IAP with that of hearings panels.

RECOMMENDATIONS

1. That the Committee note the report and approve the use of Initial Assessment Panels as a permanent part of the Council's Corporate Complaints procedure.
2. That the Committee approve the proposed changes to the Constitution in respect of the status of the Committee and IAPs and request the Governance Committee to recommend the changes to Council.

REPORT DETAIL

Background:

1. On 19 January 2009, a report was presented to the Committee inviting it to adopt an assessment phase for screening requests for hearings in order to ensure that only cases which had merit – and to which Councillors could make positive contributions – were passed on for a full hearing.
2. The model suggested was based on the Assessment Sub-Committee then in use – to good effect - by the Standards Committee. The need for such a mechanism had become apparent after Members had registered dissatisfaction at having to consider appeals about which they could do little or nothing and which had placed a time burden on both staff and Councillors as well as the cost of the rooms and materials supporting those hearings.
3. In order to ensure that Councillors remained integral to Stage Three, the Initial Assessment Panel (IAP) was originally set up with two Councillors (one of whom was either the Chairman of the Adjudication and Review Committee or one of its Vice Chairs). The IAP was designed to be informal and could be held at short notice in order to determine whether a complainant's case should progress to a full hearing or not.
4. The IAP was serviced by a clerk from Committee Administration and, if the members of a particular IAP considered it to be necessary, a member of Legal Services.
5. The options open to IAPs – from its inception to date - are

Adjudication & Review Committee, 11 April 2013

- a Reject the hearing request (and refer the complainant either to the Local Government Ombudsman or, if not appropriate, to another body)
- b Recommend the matter proceed to a hearing or
- c Refer part or all of the complaint back to the Service in order that further work can be undertaken (and hopefully the issues resolved). This is an aid to determining whether course a or b above should be followed.

Current Position:

- 6. During 2012 it became apparent that IAPs with two councillors might find themselves compromised if the two Members disagreed about a particular case (whether to pass on or reject), and so it was proposed that the number of councillors should increase to three. This has been applied and to date has worked successfully on two occasions – both of which had multiple complaints to consider (one had four, the other had two).
- 7. It also became clear that having ad hoc IAPs was not a very economical way to use Members' time and that (again using the Standards Committee model) it would be better to have set dates for IAPs and for these to appear in the Council's calendar. Currently IAPs have been planned for the third Thursday of each month (with the exception of December when it is the second Thursday) and all members of the committee have been informed of those dates. (Report to the Committee 6 November 2012).
- 8. Having set dates also helps with the planning of case presentations. It is accepted that having set dates is bound to slow down the process if the timings are wrong (for example: a case is received just after an IAP has sat. A hearings request form is sent to the complainant (who has up to 20 working days in which to respond). Once the completed form is received, it is scanned and forwarded to the appropriate service which has 15 working days in which to respond. There is also going to be a few working days (at least) between the production of the agenda and the IAP date in order that Members have an opportunity to familiarise themselves with the substance of the complaint.
- 9. It will be clear that this could mean the complainant having to wait an extra two or three weeks until the next available IAP, but it also means that if the complainant is quick in responding and the service can provide a quick response, it might just be possible to receive and process a complaint within one IAP cycle.
- 10. The March IAP had to be cancelled because a by-election was being held on the same day, so the process was disrupted to some extent as cases waiting to be considered are being held over to the April IAP.
- 11. During the course of 2012, the process has been further refined – usually in the light of experience – and currently the status of an IAP is that of a decision-making body in that it decides whether to reject a hearing request

or pass it on to a formal hearing, but if it decides on the latter course, it effectively makes itself wholly invisible and there will be no reference to the IAP. By this is meant that it makes no recommendations to a hearings panel, nor are the case papers changed in any way. What it received and deliberated on goes to the hearing as if the IAP had not happened.

Data:

12. Since the IAPs were set up, there have been 8 meetings covering 10 individual cases of which only 3 proceeded to a hearing. One case was considered by an IAP three times before being forwarded to a hearing (which was upheld). One case was considered by two IAPs with a nine month gap between. Two complainants went on from unsuccessful IAPs to the LGO and neither case was taken up by the Ombudsman.
13. A planning case, considered by IAP in November 2012, was considered by a hearings panel recently and was successful whilst another case (involving Housing) referred by the same IAP to a hearing (which took place in February) was not upheld.
14. In other cases, a complainant delayed the process for seven months before an IAP could consider (and dismiss) his hearing request. A hearing was recommended a case for a hearing, but the Service then came to a settlement with the complainant and the hearing was no longer necessary.
15. Currently there are three cases waiting for an IAP, one waiting to come back to the next IAP having been sent back to the service for further work and two recently received complaints where forms have been sent out but have not been received. An overview of the activities is appended to this report.

The Future:

16. There appears to have been a recent rise in the number of complainants who have sought to have councillors consider their complaints. This is possibly partly due to the fact of the LGO changing its procedure for handling complaints since its funding was cut. It is now only handling serious cases (where there is a likelihood of maladministration) or where the case is in the public interest and so more and more complainants are being told to return to their councils and pursue their complaints there. If this trend continues, there could be more Stage Three requests than Ombudsman investigations.
17. Further updates will be provided to the Committee at future meetings.

Changes to the Constitution

18. Because the introduction of Initial Assessment Panels was an experiment, to date it has not been appropriate for any changes to be made to the Constitution. If the Committee is minded to continue using IAPs in the future, it will be necessary to make mention of them in Part 3, 1.2 Functions delegated to general council committees. The changes proposed are:

- a. To change the status of Adjudication and Review from sub-committee back to committee.
- b. Add wording in Hearings Panels, General hearings to read:

“Initial Assessment Panels – To assess complaints referred to Members for their adjudication under the agreed Corporate Complaints procedure”

And amend existing wording to read:

“To consider complaints by service users referred to them by Initial Assessment panels relating to the service made available to them in accordance with the authority’s agreed Corporate Complaints procedure.”

The above changes will ensure that, in the event of a challenge to any decision to reject a hearings request by a complainant because the IAP is not a formal part of the procedure, the Council has taken steps to eliminate any such charge and thereby eliminated any potential claim for damages or charge of maladministration.

IMPLICATIONS AND RISKS

Financial implications and risks:

The use of Initial Assessment panels as a screening process is intended to limit the number of cases going to full appeal and thereby managing resources more effectively. The actual costs are dependent upon the number and nature of appeals arising in any one year.

Legal implications and risks:

There are no direct legal implications from this report.

Human Resources implications and risks:

There are none associated with this report.

Equalities implications and risks:

There are none associated with this report

BACKGROUND PAPERS

E-mail correspondence re: amendments

Summary of Stage Three activity March 2011 – March 2013

Date Notified	Date of IAP	Hearing Date	Comments
09/03/2011	20/10/2011	-	Parks & Open Spaces. Rejected at IAP. Delays at request of complainant.
03/10/2011	22/11/2011	-	Private Sector Leasing. Rejected at IAP
18/10/2011	-	-	Housing Allocations – Mutual Exchange. HoS used discretion to resolve issue. Did not reach IAP.
03/11/2011	-	-	StreeCare – adoption of road. Did not proceed due to complainant not providing a completed form. He subsequently went to the LGO who rejected his case.
21/11/2011	-	-	Housing Register. Complainant withdrew her complaint when she was offered a property.
05/12/2011	20/02/2012	-	Housing Needs. IAP referred this to a hearing but the complainant was offered a property and withdrew complaint..
12/12/2011	20/02/2012	-	Private Sector Leasing. Rejected at IAP
29/02/2012	13/04/2012 08/05/2012 10/07/2012	05/09/2012	Housing issues (complaint about staff and that complaint was not addressed by service). Upheld by Hearings Panel £150 awarded time and trouble.
01/08/2012	21/02/2013	-	Housing Needs. This is the same complainant as above (IAP 22/11/2011). It was rejected here as well.
June 2012	22/11/2012	04/03/2013	Planning issues. Complaint upheld.
July 2012	21/02/2013	-	Council Tax issues. Rejected at IAP
28/08/2012	22/11/2012	19/02/2013	Housing (Disputed rent levels). Complaint not upheld.
07/09/2012	22/11/2012	-	Building Control issues. Referred by the LGO. Rejected at IAP. Complainant returned to the LGO and no investigation ensued.
16/11/2012	Pending	N/A	Neighbour nuisance.
09/01/2013	21/02/2013	N/A	Parks and Open Spaces. Was returned to service by IAP. Will go to next IAP.
05/02/2013	Pending	N/A	Highways.
22/02/2013	Pending	N/A	Housing Repair
11/03/2013	Pending	N/A	Property Services. Referred by LGO. Awaiting return of form
12/03/2013	Pending	N/A	Planning issues. Awaiting return of forms.

Correct at 22 March 2013

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11 April 2013

Subject Heading:

**CHANGES BY THE LOCAL
GOVERNMENT OMBUDSMAN
AFFECTING HAVERING**

CMT Lead:

Ian Burns, Acting Assistant Chief
Executive

Report Author and contact details:

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Policy context:

Review of how the impact of changes to the LGO's resources affect external monitoring of complaints in Havering

Financial summary:

Reduction in LGO activity could have a financial impact on the Council as more complaints escalate to Stage Three hearings.

Has an Equality Impact Assessment (EIA) been carried out?

Not required.

The subject matter of this report deals with the following Council Objectives

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
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SUMMARY

The reduction in funding received by the LGO was communicated to Members in a report to the Committee last November. Since then, there has been a reduction in new investigations against Council services to zero and all outstanding investigations have (at the time of writing this report) also been closed.

Currently, the only contact from the LGO has either been requests for information, referral of a few cases back to the Council for progression through its Corporate Complaints process or notification of non-investigation outcomes or complaint considered outside the Ombudsman's jurisdiction.

RECOMMENDATIONS

That the Committee note the report.

REPORT DETAIL

1. In the report to Committee on 6 November 2012, Members were informed about significant changes being implemented by the LGO in the wake of funding being reduced by some 27%.
2. Initially, this had very little day-to-day impact on the receipt and response to Ombudsman investigations, but since the start of 2013, there has been a radical change in the through-put of LGO work. From having anything between four and over a dozen investigations open at any one time, the number of new investigations suddenly ceased. The only cases referred were those either not investigated or assessed as being outside jurisdiction or even no evidence of administrative fault. During February and March, the Council was notified of the final decisions in the remaining cases technically open (though provisional views had already been received which meant they were no longer technically “active”). The Council therefore starts April 2013 with no Ombudsman investigations.
3. Enquiries are still received on a (fairly) regular basis, but more often than not they only result in a “not to initiate an investigation” follow-up. On occasion – and if this trend continues it could have an impact on the Corporate Complaints process above Stage Two – a complaint will be referred back to the Council for processing through its complaints procedure. Whilst this is nothing new in itself, the Ombudsman has removed herself from monitoring progress of these referrals (though a failure to pursue the complaint by the Council could trigger an investigation into possible maladministration).
4. The potential impact of this development is that as the Council becomes responsible for ensuring that more complainants are fully dealt with “in house” a rising proportion are likely to escalate their complaints beyond Stage Two. This will have financial implications for the Council. IAPs do have a cost in the preparation of each case, but if more complaints go to hearings for resolution, the cost in officer time, Councillor attendance and printing costs alone will grow. Currently, this is speculative, but it is something the Committee – and Council – needs to be conscious of.

5. It may be that a clearer picture of what the Council is facing will not begin to become apparent until later this year. At a recent LGO Seminar (8 February) the LGO revealed that this was uncharted territory for it as well as for councils and that changes to its structure and the way it managed complainants' expectations was going to be very much improvised. At present, it can be safely assumed that the LGO is still in her transition phase, but what happens when she has had time to evaluate how the Ombudsman service is working, we may see a different relationship developing.
6. The year 2012/13 has seen some considerable change and this is illustrated in the charts covering the year to the end of March which will be made available to Members at the meeting.

IMPLICATIONS AND RISKS

Financial implications and risks:

The impact of changes in LGO funding on the level and nature of complaints remains uncertain at this time. There is a risk of an escalation in the number and cost of complaints proceeding through the corporate process but this position will need to be kept under review.

Legal implications and risks:

There are no legal implications arising from this report.

Human Resources implications and risks:

There are none associated with this report

Equalities implications and risks:

There are none associated with this report

BACKGROUND PAPERS

None

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