



ADJUDICATION & REVIEW COMMITTEE

6 August 2014

Subject Heading:

STAGE THREE ACTIVITY – 1 April – 31 July 2014

CMT Lead:

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Policy context:

Summary of complaints escalated to Stage Three of the Council's complaints procedure for Member review to assist the Council ensure good practice is maintained

Financial summary:

None directly associated with this report

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 summary of Stage Three complaints considered by Members since 1 April 2014 is provided in order that the Committee as a whole has an appreciation of the subject matter and the decisions made.

RECOMMENDATIONS

That:

1. The Committee note the Report.
2. The Committee decide whether it wishes to receive this sort of report in future and whether it is content with the current format or would prefer information to be presented differently.

REPORT DETAIL

Background:

1. The Adjudication and Review Committee has oversight of the Council's Corporate Complaints process and Members of the Council have, historically, maintained their right to be included in the complaints process as a final review of issues which officers have not been able to resolve.
2. Since 2010 the complaints process itself has evolved considerably. At first, the change was from an adversarial hearing to an inquisitorial style which allowed Members to engage directly with the parties and drive the process through their own enquiries. This had a twofold effect: it speeded up the process and allowed members to use their own skills and knowledge to ask pertinent questions and so arrive at better quality decisions.
3. It was still a cumbersome process however as any complainant could request a Stage Three hearing and there was nothing to filter those complaints which were of a vexatious nature or simply an expression of the complainant's frustration. In addition, the Local Government Ombudsman put in place a "Council First" initiative which meant that more complainants were directed back to their home council's complaints process before the LGO would look at the matter.
4. At that time, the only informal check on the wholesale escalation of complaints to formal hearings was being made by staff in Democratic Services. During 2012 the Committee agreed to some further refinement of the process when it agreed to the introduction of Initial Assessment Panels (IAPs) initially with two Members, but now with three, which would sit in private and determine whether a hearing request should be allowed or whether it had sufficient information to determine the matter. The precedence for these panels was the Standards Committee procedure.

The Current Position:

5. IAPs are now scheduled monthly and a resolution is achieved with most cases, thereby ensuring complainants receive a councillor review without the Council incurring the cost of a formal hearing – though where Members consider that the issues are not clear, hearings are recommended and heard before a different panel and with an Independent Person on the Panel.

Statistics - 1 April 2014 to date:

6. At 1 April, there were six open complaints waiting for members to review (and during the year 2013-14, a total of 24 complainants had asked for a Member Review). Since then another six complaints have been referred and there have been four IAP meetings: 24 April (Two cases – both adjourned), 15 May (the two adjourned cases considered), 3 July (One case – considered) and 24 July (One case – adjourned).
7. The six cases brought forward related to traffic and parking issues, housing needs, housing maintenance, neighbour nuisance, benefits and a review by a panel of Independent Persons under the Children Act legislation. Out of this six, four cases have been resolved. Three were determined at IAP meetings and the Children Act case was a formal hearing. The three corporate complaints determined by IAPs were all not upheld and the Children Act case was partially upheld.
8. Although not upheld, in one case involving housing, the Panel was minded to award £200 compensation to the complainant because of the delays and length of time the complaint had taken to get to Stage Three.
9. Of the remaining two brought forward cases, one was adjourned because the housing service had received notice that changes in government legislation meant the complainant's case might be resolved once the new procedures had come into force and in respect of the other case, attempts to contact the complainant had proved ineffective and at the IAP held on 24 July, the Panel agreed that it should be discontinued.
10. In two of the six new cases, one complainant (planning issues) withdrew as did the other (traffic and parking) saying that the matter would be referred to the LGO. Nothing has yet materialised from that direction.
11. Of the remaining four, one (concerning benefits) was not upheld at IAP, one case is for an Independent Persons Panel as it falls under the Children Act legislation (a form was sent a while ago and no response has yet been received so that may fail as the Children Act has strict time-scales in which a hearing needs to take place) and with the other two, one form was not returned in time (traffic and parking issues) and the IAP of 24 July agreed that it should be closed, whilst in the final case (housing maintenance), the complainant returned her form in time and it is currently with housing services.

Incidence of Stage Three decisions being referred to the LGO:

12. There have been some complainants who, unable to obtain the result they wanted from the complaints process (and in this the social care statutory process has been included), refer their complaint to the LGO. The view commonly held in the Council is that the Corporate Complaints process and Ombudsman investigations are completely distinct. Reality suggests that this is not strictly true. Whilst the Ombudsman allows the Council to pursue a complaint locally until the process is complete, if the complainant remains dissatisfied s/he can return to the LGO and ask for her to look at the matter. Invariably an enquiry from an LGO Investigator will include a request for copies of the complaint responses (including any Stage Three decision) and most often the LGO will tell the complainant that she will not investigate the matter further nor can she change a decision properly taken by the Council.
13. Though this suggests that the Ombudsman keeps clear of the complaints process, it does not mean that the process itself (or its application) is immune from investigation and, if the LGO considers that it there has been maladministration (thereby causing a complainant injustice) a finding (and a possible financial penalty) could follow – even if the Council’s final decision was reasonable.
14. There is no “normal” pathway linking the LGO and the Council’s complaints process as each case considered differs from another in some way. For example: in one case the complainant approached the Ombudsman and his case was referred back to the Council (premature) and from there it progressed to Stage Three and once the complainant had been given his decision he returned to the LGO and was informed that the matter would not be investigated.
15. In another case a complainant took her complaint through the three stages of the Corporate Complaints process and *then* approached the Ombudsman and was informed the matter would not be investigated; whilst in another case, the complainant - having initially approached the Ombudsman and been told to pursue the matter through the complaints process, which she did - once her Stage Three decision had been given (Members finding the service had done nothing wrong in the way it had acted) she returned to the LGO who decided to initiate an investigation. This is quite unusual as, in this particular case, the Investigator not only wished to have the whole matter presented to him, but also wanted to evaluate the Council’s complaints process to see how robust it was and how it was applied in this particular case. The final decision, when it came, did little more than the IAP had originally decided.
16. The reality is that whilst in theory Member Reviews and the Ombudsman have equal (Stage Three) status in the overall complaints process, the Ombudsman can be used as a Stage Four process review.

Future Developments and Refining the Process:

17. The Corporate Complaints process is not set in stone and is designed to evolve in response to changing circumstances. Since the introduction of the IAP, the Council has saved a good deal of unnecessary expense (by not holding formal hearings so often) and members of the public continue to have their complaints considered by their elected representatives within a timely manner.
18. Members have now accepted the principle of considering complaints without the formality of an open hearing and the role of the IAP (from its original conception of being a “filtering mechanism”) has developed a professional methodology of its own and can really be considered to be the principal Stage Three forum.
19. If the Committee considers it appropriate, it may be time to revise its designation from “Initial Assessment Panel” to “Member Review Panel” – though the option for a MRP to refer a complaint to a formal hearing panel would be retained as not every case is likely to be able to be determined without reference to the complainant and/or the service. Such a change would require ratification by the Governance Committee and some changes to the Constitution but if the Committee is so minded, a start could be made (by changing the Panel’s name) and a further report would be presented for approval at the next meeting.
20. In conclusion, it remains true to say that since the introduction of IAPs, the Stage Three process of reviewing complaints has been far more efficient and cost effective and has resulted in considerable savings in officer and Member time as well as in the overall reduction of administrative costs whilst still giving residents access to Councillors and to their decision-making which benefits from being totally independent of the Council’s service perspectives.

IMPLICATIONS AND RISKS

Financial implications and risks:

There have been financial implications during the year 2012-13 because of Ombudsman activity. Any penalties and compensation is met from within existing budgets of the services affected.

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

Electronic records of the complaints