



ADJUDICATION & REVIEW COMMITTEE

4 November 2014

Subject Heading:

**STAGE THREE COMPLAINTS –
Changes to format**

CMT Lead:

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Policy context:

The Council's Corporate Complaints
Process.

Financial summary:

None directly associated with this report

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

In 2011 the Adjudication & Review Committee introduced a change to the manner in which Stage Three of the Council's Corporate Complaints process was conducted. In order to speed up the procedure, it adopted a "initial assessment" model taken from the Standards Committee process in which a panel of Members met informally to consider the merits of individual cases on the basis of both parties written submissions and to either pass the matter to a different panel of Members to hear the matter formally, or to decide the matter itself.

Over time, more complaints were found to have been decided at this initial stage than were recommended for formal Hearing. This has been to the benefit of the complainant – as it meant the decision could be obtained within a shorter time-scale than would be the case even if the matter had gone straight to a Hearing – and has proved cost-effective to the Council – in that the expense of booking rooms, having officers in attendance, providing (in many cases) a large amount of

paper in agendas to all parties as well as committing a Panel of Members and an Independent Person to a hearing.

As the process has evolved since its inception, it has become apparent that it is still possible to refine the process further and as this will involve changes being made to the Constitution, it is appropriate that the Committee consider the new proposals and decide whether to formally adopt them and if so, to recommend a report be sent to the Governance Committee in order to ensure the Constitution reflected current practice.

RECOMMENDATIONS

That the Committee:

1. Accept the changes to the terminology: to rename the “Initial Assessment panels” to “Member Review panels”
2. Agrees to remove the requirement to form a Hearing panel from Members who were not part of the Assessment/Reviewing panel as this would contribute to a greater efficiency of resources and would not involve duplication of effort.
3. Authorise a report to be sent to the Governance Committee to ensure changes to the Constitution reflect the change in nomenclature and process.

REPORT DETAIL

Background:

- 1 Before 2011, Stage Three of the Council’s Complaints process involved only a formal Hearing in which a panel of three Members (with an Independent Person) considered a complaint against a Council service. The Hearings involved the attendance of the head of the service involved in the complaint, the complainant, witnesses on either side (if called), a clerk and a member of Legal Services.
- 2 The Hearing itself was conducted in an adversarial manner which meant that hearings tended to become protracted and repetitive and, in a growing number of cases, Members were expressing their dissatisfaction with the process which they considered to be both cumbersome and costly in both time and money.

- 3 In 2011 two changes were introduced.
 - a. Hearings themselves would henceforward be conducted under inquisitorial rules – meaning that Councillors would now drive the process by asking direct questions until satisfied that they had sufficient understanding of the matter to come to a decision; and
 - b. The introduction of an “Initial Assessment” panel. Originally an informal ad-hoc meeting of two members of the Adjudication & Review Committee to assess the merits of a complaint and the service’s response in order to decide whether to refer the matter to a formal hearing or, by exercising its discretion, to dismiss the matter. This “by-product” at once ensured that in complaints which had little substance, a swift decision could be reached without recourse to the costly and slower Hearing route. This was seen as benefitting the complainant who at least received a relatively quick answer and could, if they chose, take the matter to the Local Government Ombudsman.
- 4 Over the following two years the Initial Assessment Panel evolved into a three Member panel and “IAPs” were placed monthly on the Council’s calendar (being cancelled only if there was no business to transact). During the same period IAPs referred fewer cases to hearings and deliberated on and determined more and even fairly complex cases coming to decisions which ranged from “not upholding” through “partially upholding” to “fully upholding” complainant’s cases and providing services with either recommendations about how to improve service delivery or directing them to pay compensation.

Current Situation:

- 5 During 2014 it became obvious that the balance of Member activity was clearly focused on the IAP. Its original “filtering” role – though still at its heart – was not being invoked. In real terms it had ceased to be an “initial assessment” panel and had evolved into a Member Review Panel with the same range of decision-making powers as a formal Hearings Panel (though without the Independent Person).
- 6 These days, the process routinely follows the following path:
 - a. A Head of Service (or Group Director) formally requests a complaint to be escalated to Stage Three.
 - b. A “Member Review” form is sent to the complainant (who is warned that they have 20 working days to complete the form and submit it, along with any supporting evidence). Complainants are also informed that failure to comply with this time-scale will render their complaint void unless reasons are given why additional time is required.

- c. Once received, the form (and any other material) is scanned and e-mailed to the relevant service which has 15 working days to provide a formal response – with any of its own evidence.
 - d. When this is received, the case is scheduled for the next IAP/Member Review, date and a panel is formed which comprises a Chairman (either the Chair or one of the Vice Chairs) of the committee and two other members of the committee who are not resident in the complainant's Ward.
 - e. Agendas are sent to those Members and they will convene on the appointed date and time and consider however many issues are on the agenda for that evening. Unless absolutely necessary, any complaint ready for a Member Review by the time the agenda is to be published, will be added to the agenda. This is to ensure complainants do not have to wait any longer than necessary for a Member decision.
 - f. At the start of each case, each Panel member is asked whether, having read the papers, they consider that the matter ought to be referred to a formal hearing, or was of such nature that it could be dealt with summarily.
 - g. If the former – and at least two members of the panel agree, the matter is not discussed, but the clerk will, as soon as practicable, commence making arrangements for the case to be heard by a different panel and with the complainant and service present.
 - h. Should the decision be to deal with the matter, the process of examining the complaint in a regulated manner commences. Members are asked to provide reasons for decisions at each stage until a full determination has been reached.
 - i. Once the panel has provided the clerk with its decisions, the Chairman signs the complaint evaluation form from which the clerk will prepare the draft Decision Notice.
 - j. Once the draft Decision Notice is complete, it is e-mailed to each of the panel members who have an opportunity to comment and suggest any revisions, corrections etc.
 - k. Once this has been accepted, the clerk e-mails the service and invites comment.
 - l. A copy of the Decision Notice, along with a copy of the portion of the agenda detailing only that complaint, is sent to the complainant. The case is then closed, although the complainant, now with a copy of the panel's decision and with the service's response to the original complaint, could, if they so chose, refer the matter to the Local Government Ombudsman.
- 7 Even in less straitened financial times, the cost-effectiveness of the Member Review Panel over the formal hearing would be attractive as it ensures complainants received Member consideration of their complaint and a decision which is independent of the paid service. As this element was a foundation principle when Havering elected to retain its three tier complaints process - Elected Councillors retaining concern for the actions of those working in their name – it makes sense to ensure that both Member and

officer time is occupied in the most efficient manner available, and the Member Review Panel appears to deliver this.

- 8 As the MRP has the option to refer any matter it chooses to a formal hearing, the original concept – the public and the service coming together before a Hearings Panel – remains a reality which can be accessed where Members consider the matter would be best addressed by direct questioning of the parties.

Proposals for development:

- 9 When the IAP was introduced, the Committee was asked to approve a working proposal that, if the IAP referred any matter to a Hearing, it would be considered by a Panel which comprised of Members who had not been party to the earlier deliberations. This arrangement had been suggested in part because the original IAP had only two Members. IAPs have, for some time, been three member panels and the practice – introduced around 18 months ago – was to ask an initial question: Do Members consider this complaint would be better considered at a formal hearing? If the answer is in the affirmative, there is no further discussion of the matter and, if there are more items on the agenda, they are tackled in the same manner.
- 10 This option raises the possibility of having the same Members forming (with the addition of an Independent Person) the hearings Panel on the grounds that:
 - a. No discussion of the complaint had taken place and
 - b. The members of the MRP had already taken time to read through the case papers and familiarise themselves with the complexities of the matter and were sufficiently acquainted with the complaint that they had formulated questions which they would like to put to either – or both – parties. It follows that it would make sense to allow those Members to make use of their knowledge and ask the questions which had suggested themselves and which prompted the decision to ask for the complaint to be referred in the first place.
- 11 The Adjudication & Review Committee has a current membership of ten. It might be argued that there were sufficient councillors to create a hearings panel with a different composition, but observation suggests that when Panel members accept the task of considering complaints at an IA/MR panel, there is a sense of “ownership” and a reluctance to set aside the time and effort taken to become proficient in understanding the elements of the complaint – and the service response – and so there is a risk of decisions being taken at IA/MR panel which could have benefitted from having an open hearing.
- 12 Should Members consider adopting this proposal, there may not be a noticeable increase in formal hearings being proposed, but future Member Review panel members will have the security of knowing that there has been no “wasted” effort and there will not be a “duplication” of effort.

IMPLICATIONS AND RISKS

Financial implications and risks:

There are no adverse implications and risks associated with these proposals as they are either procedural changes or designed to ensure greater cost-efficiencies are obtained.

Legal implications and risks: There are no direct 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