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MINUTES OF A MEETING OF THE ADJUDICATION AND REVIEW COMMITTEE Town Hall 4 February 2015 (7.30 - 9.50 pm)

Present:

COUNCILLORS

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|---------------------------------------|---|
| Conservative Group | Joshua Chapman (Chairman), Roger Westwood (Vice-Chair), Jason Frost and +Ray Best |
| Residents' Group | John Mylod (Vice-Chair) and Barbara Matthews |
| East Havering Residents' Group | Alex Donald and Brian Eagling |
| UKIP Group | David Johnson |
| Independent Residents Group | Michael Deon Burton |

Apologies for absence were received from Councillor Meg Davis (Councillor Ray best substituted for her)

The clerk, on behalf of the Chairman reminded Members of the action to be taken in an emergency.

There were no declarations of pecuniary interest.

Also present were Councillors Jeffrey Tucker and David Durant along with two members of the public.

15 MINUTES

The Minutes of the Meeting held on 4 November 2014 were accepted and signed by the Chairman.

16 CORPORATE COMPLAINTS: PRESENTATION

Members received a presentation from the Head of Policy and Performance who explained that she was taking a different approach to the usual statistics-based format in response to Members' requests.

The good news was that several service areas had achieved 100% resolution of issues at Stage One within the corporate time-scales. Overall, the October to December target of 90% had been achieved. Members were reminded that the comparative figures for the previous year did not contain

the Housing complaints which were held on a separate data-base and so the apparent rise for the current year was rather more illusory than real.

With respect to the Member/MP enquiries for the same period, whilst the first two months showed a rise, during December there were fewer contacts – but again, the OHMS data for the previous year was not included on the charts and so the margins would have been wider in December and smaller in the other two months.

The Head of Service pointed out that across the Council, around 84% of Member/MP enquiries were responded to within the 10 working day time-scale.

The Committee was informed that the largest single service area for complaints and Member/MP enquiries, was StreetCare (66% of the total). By comparison, Housing was only 16% and now that Council Tax and Benefits were provided by oneSource, it attracted 3% for those areas, which meant that there was only 15% remaining for the rest of the Council's service provision.

The Head of Policy and Performance then explained to Members that in response to the interest shown for the Head of Regulatory Service's presentation at the last meeting, she was pleased to show the Committee some examples of different complaints and how they were handled along with the outcomes which, she hoped, would provide an insight into the realities behind the statistics. She presented four examples, one each from StreetCare, Housing, Regulatory Services and oneSource which she said were fairly representative of the bulk of complaints and Member/MP enquiries received and dealt with by staff, reminding the Committee that this amounted to some 4,710 activities over the nine months to the end of December (3,112 Member/MP enquiries and 1,588 complaints at Stage One). Of the Stage One complaints, 105 (less than 10%) were escalated to Stage Two. Members were reminded that this activity was usually on top of officers' usual duties.

Members thanked the Head of Service and asked a number of questions primarily around street lighting issues. Fortunately, the head of StreetCare was present and able to provide answers to these.

In conclusion, he mentioned compliments and gave a few examples which, he assured Members, demonstrated the success having a policy of staff "going the extra mile", being professional, showing empathy and being helpful.

The Committee **noted** the scope and content of the presentation and thanked the Head of Policy and Performance for her providing the usual statistics-based information in an interesting and meaningful format.

17 PRESENTATION - STREETCARE

The Group Manager, Business and Service Support, on behalf of the Head of StreetCare, introduced this presentation. She informed Members about the range of services which fell under the umbrella of StreetCare. As well as Highways and Traffic and parking Control, StreetCare was also responsible for Environmental maintenance and Waste Services.

She explained that there were various routes in which members of the public could engage with StreetCare about service provision including the Corporate Complaints process, the Local Government Ombudsman and through Members and MPs. She identified six complaint themes:

- Dissatisfaction with the level of service or the quality of its delivery
- Disagreement with a decision
- Dissatisfaction with Council policy
- Staff behaviour or
- Used (erroneously) as a route to try and appeal a parking penalty charge notice.

For the year December 2013 to November 2014, StreetCare had received 493 complaints which were dealt with at Stage One. The Committee was shown that these fell in almost predictable patterns. For example: Concerning street trees, the complaints would peak in late autumn when leaves fell and concerning the road surface (pot-holes) that peaked in January. Waste and recycling tended to peak in August (usually the hottest month and people on holiday/school holidays) whilst for traffic and parking, there was no discernible pattern.

Around 10% of Stage One complaints went to Stage Two in StreetCare. Of the 493, 50 were escalated. This was slightly higher than the service would like, but consistent with Council targets. Unfortunately the service's performance in resolving complaints within 10 working days only reached the Corporate target of 90% once (in March 2014) when it was 97%.

Concerning Member and MP enquiries, the Committee was informed that StreetCare received more than any other service area which included enquiries about non-Council related issues as well. For the nine months between April and December 2014, the chart showed that – unsurprisingly – the highest number of enquiries concerned highways – though environmental maintenance came a close second. To illustrate the range of concerns raised by Members and members of the public, the Group Manager showed a series of slides illustrating abandoned vehicles, parking enforcement and fly-tipping – something which was not only unsightly and potentially dangerous, but cost the Council a good deal to clear. She did add that staff searched through fly-tipped refuse to see if they could find any clues to where it came from and if names and addresses were found the service made a point of pursuing those people to recover the cost of clearing it from the public areas and prosecuting offenders. Members were reminded that this only applied to public property, not private land. Anything

tipped there was the landowner's problem – though the service would assist wherever it could.

The final element of the presentation was about compliments. The Group Manager explained that there were examples of the public showing their appreciation. For example: staff “going the extra mile” – mostly for members of the street cleansing team for doing extra work to ensure areas not normally on their round, were cleaned. There was thanks for resolving an issue quickly and there was positive feed-back for staff attitude and for helpfulness, particularly in difficult situations.

The Committee thanked the Group Manager, Business and Service Support for her presentation and **noted** the entertaining and informative manner in which she had delivered it.

18 MEMBERS CODE OF CONDUCT COMPLAINTS PROCEDURE

The Interim Director of Legal and Governance reminded the Committee that at the last meeting, the Committee had authorised him to make some changes to the proposed revision to the Code of Conduct complaints procedure and that the documents before Members were the result of those changes.

He explained that at the last meeting he had stated that – in response to a member's explicit concerns about the inclusion of an appeal process within the procedure, there was no evidence from anywhere else that such a process existed – certainly not within the procedures he had either developed or helped develop, nor in those he had had any experience of.

He drew Members attention to the report commencing at 2.7 and assured the Committee that there were sufficient safeguards within the process to ensure that there would be no need for a Member to feel that they were being denied justice if, at the end of the process, a Hearings panel upheld the allegation(s) because the process to that point was robust, open and simple. The Monitoring Officer would review the claims informally first to see if the matter could be resolved, if not an Assessment Panel drawn from members of the Adjudication and Review Committee would consider it further and if it was of the opinion that there were grounds for a formal hearing, that would be undertaken by a Hearings panel also drawn from the Adjudication and Review Committee, but different from the Assessment Panel.

He was mindful of the fact that there were only 10 Members available in the Committee and also that the largest objection to the process currently in use was that it was open-ended and this tended to delay and even frustrate natural justice. This process was strictly time managed and if it was extended by the addition of an appeal procedure, there would be delay, cost and the difficulty in finding an appropriate Appeal Panel.

Councillor Burton asked for permission to present his objection to the procedure being adopted without an appeal mechanism and spoke about

the right of an accused to appeal, citing processes (like parking offences) where there were appeal processes to ensure that the innocent were not penalised through process error or other mistake. He contended that it was an important legal principle enshrined in law since Magna Carta and to remove it from the process would be to render that process flawed and open to abuse.

A Member observed that Magna Carta provided for trial by one's peers – and the process as set out in the report provided for that. Another member observed that appeals procedures did not exist in all places, citing clubs disciplinary procedures for their members. The club's disciplinary board determined the decision from the facts and set the penalty. There was no appeal process there and this was identical in form to that. Where appeals processes were in place they were more often for general matters (like parking fines). It was conceded that the judicial procedure had an elaborate set of appeals processes built into it, but the justice system was very slow and very expensive and did not equate to what was being proposed here.

Councillor Burton responded by asking about the process when the Standards Committee existed, asking for confirmation that an appeal process existed then. The clerk replied that in those days there was an external body to which appeals could be made: the Standards Board of England, but this had been abolished by the Localism Act, the same legislation which had abolished the need for Standards committees and which had, effectively made each authority responsible for its own members' behaviour monitoring.

Councillor Tucker asked leave to speak and, having verified from the Constitution that, as a Group leader he could indeed address the Committee, he stated that he wished to fully support his colleague's contention that the process being considered ought to have an appeal procedure within it to ensure that Members, alleged to have broken the Code of Conduct, could argue their innocence if the hearing Panel found against them. Without it, the process was open to abuse.

A Member suggested that whilst not ideal, perhaps – if another Council agreed – an appeal could be made to its members. Councillor Burton thought this would be a good idea and not likely to be too costly – though he argued that material cost should not be a consideration in the balance of an honest decision

The Interim Director of legal and Governance considered that it would be impractical to try and set up such a process and doubted whether it would even be possible to find an authority which would agree to undertake such a task. Would another authority want hawking councillors to judge its own Members? Would Havering Members be happy to submit themselves to the decisions of those of a different authority? Could those decisions be enforced anyway?

Another Member expressed the opinion that the process before the Committee looked robust enough. Officers needed to have the trust and confidence of Members otherwise the whole process would cease to

function. He added that no system, whatever it was, was going to be perfect, this appeared to be good and it needed the good-will of both Members and officers to make it work properly.

Having discussed the matter at length, the issue of whether to accept the recommendations as set out in the report was put to the vote.

In favour of the motion: Councillors: Joshua Chapman, Roger Westwood, Jason Frost, Ray Best, Barbara Matthews, John Mylod, Alex Donald, Brian Eagling and David Johnson

Against the motion: Councillor: Michael Deon Burton

The motion was **CARRIED** by nine votes to one.

1. The Committee **approved** the arrangements for dealing with allegations against Members as set out in the appendix to the report and
2. Referred the report to the Governance Committee to include the arrangements in the Council's Constitution:

Councillor Burton expressed his thanks to the Committee for allowing him to present his arguments in favour of an appeal process at length to it and that although he did not agree this was the model he would have preferred he accepted that it was the will of the Committee and accepted its decision.

19 **STAGE THREE COMPLAINTS - UPDATE**

Members considered the report covering all the Stage three Member Reviews since the 1 April 2014 to date. The Committee noted that there had been six cases which had been determined and that, of these, the LGO had had some input in two cases.

The Committee also noted that six cases had been discontinued and that the LGO was involved in two and of the remainder, three were currently with the Service and one was with the complainant. Of the decisions, none had been upheld and it also noted that in addition to these, there had been one case which had involved Social Care and that this had been partially upheld by a panel of Independent Persons.

The Committee **noted** the report and said that its format was acceptable to it.

20 **ORAL UPDATE OF LOCAL GOVERNMENT OMBUDSMAN AND STAGE THREE ACTIVITY TO 31 JANUARY 2015**

The Committee received an oral report from the clerk concerning the activity to the end of January of the LGO as well as the Stage Three process. Members noted that there were some differences between this update (which had been taken at the end of January) and the earlier report in that it

showed eight cases as having been discontinued 12 cases not being upheld by Members and three cases awaiting processing. The overall number of cases was 24 of which six had been brought forward from the previous year.

Members were made aware of the recent increase in Ombudsman activity and noted the possibility that this could herald a permanent change.

The Committee **noted** the oral update

21 **LETTER FROM THE LOCAL GOVERNMENT OMBUDSMAN**

The Chairman introduced this item drawing the Committee's attention to the letter sent by Dr Martin to him in response to the Committee's letter to her concerning the 2014 Annual Letter. He said that the letter really had very little to recommend it. It provided few answers and gave no hope that the coming letter was going to be any different.

Members agreed with this assessment of the LGO's letter's content and the view was expressed that it seemed to leave the criticisms unaddressed and that it appeared pointless pursuing it further.

The Committee **noted** the LGO's letter and her comments.

Chairman

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