

## **APPENDIX 3 – A & R 26th November 2015**

### **Stage 3 Corporate Complaints policy and procedure** **The role of Members**

With the change in responsibilities for the Council's Corporate Complaint procedure, a change in emphasis is proposed to the Stage 3 element of the procedure. Experience for Members will remain the same and therefore does not need referral to Governance Committee, however the proposed changes intend to provide greater clarity to the complainant on the expectations of the procedure and enable the Stage 3 session to feed into lessons learned from the outcomes of complaints. There follows an explanation of this proposal.

#### **Current Member Review Panels (MRPs) initially IAPs**

The original purpose of an IAP was to "sift" requests made to councillors for a Stage 3 Hearing within the Council's Corporate Complaints Procedure. In order that a resident could have a complaint considered by councillors (but without the administrative input or cost of a full hearing), it was felt appropriate to employ a mechanism to determine whether the request should proceed to a hearing, be referred back to the relevant service for further action, or rejected. During 2014 the IAP changed to become the more formal Member Review Panel because it had developed into the principal reviewing body at Stage 3.

The composition of the MRP is either the Chair (or Vice Chair) of the Adjudication and Review Committee (A&R) and two A&R Members. Unless the MRP has asked for a legal representative to be present, the only other attendee is the clerk who ensures that all the elements are addressed and produces the decision notice. The clerk is also responsible for ensuring that all parties are kept informed should Members request an adjournment, for example, or that the MRP determine that a full hearing is necessary.

Initially, there were **three** options open to the MRP:

1. To reject the hearing request (with reasons provided);
2. To accept the hearing request and recommend a hearings panel be set up, or
3. To decide whether there remained elements of the complaint which had not been adequately addressed. In this case, the following options were available:
  - a. A request from the service for further information, clarification or explanation;
  - b. A referral to the service with a direction that any deficiency in addressing the issues or completing actions outstanding should be undertaken and a revised report on those elements submitted.

In both a and b above, the MRP would set a reasonable timescale for response (the next MRP date for example) but it meant that the MRP making the referral would need to reconvene to evaluate the service response.

#### **Proposal for change**

Over time it became increasingly obvious to Members that unless there was a good reason for asking the complainant to a Hearing Panel, effectively allowing the complainant to "have their day in court" and be in a position to respond to questions, the complainant would have to wait an excessively long time for a decision when a decision could be taken at the MRP. In the majority of cases the Panel was of the opinion that a hearing was not

necessary and that it was in everyone's best interests to deal with the matter immediately on the case put before it.

Over the last 12 months, the MRPs increasingly determined the complaints presented to them in the report. At the outset, the MRP is now asked whether it considers it has sufficient information to proceed to consider the complaint. If that is confirmed, the MRP considers, deliberates and determine the matter before it. If it considers there are elements which only an open hearing could address, the complaint would be referred to a Hearings Panel, where the complainant, the service and the CE's office representative would be invited to attend.

The proposal therefore is to change the emphasis on the response to customers from a "rejection" of a hearing request to an "acceptance" that the MRP had sufficient information available to determine the matter at this early opportunity. From a customer perspective the emphasis is on the swift action of Members to address their concerns rather than Members rejecting a full hearing.

To provide confidence to the community on the timescale and robustness of this process, a fuller explanation will be provided to customers whose complaint progresses to Stage 3 that complaints reaching a full hearing are the exception and therefore diminish the expectation that the complainant will automatically get the chance to represent themselves to Members.

Another reason for the change in emphasis is to meet the new targets set. Under the Corporate Complaints procedure, the target for determining a Stage 3 case is specified as 31 calendar days which is the target from receipt of request for a Stage 3 complaint to the date of the MRP determination. Those complaints that are particularly complex, very serious, or which are difficult for Members to determine without questioning the parties concerned, are the exceptions and in those particular cases it would be reasonable for the complainant to be informed by the clerk that the MRP has called for an adjournment for a full hearing and the complainant will be invited to attend. These cases will inevitably not meet the 31 calendar day deadline, however given the rarity of these cases, and that they are the most complex, it would be reasonable to take longer to determine the outcome. This is in line with other exceptions at Stages 1 and 2 where the complexity cannot be unravelled within the standard timescale.

Since the Corporate Complaints policy and procedure changed on 1<sup>st</sup> April 2015 the Chief Executive is the responder to Stage 2 complaints. A depth of knowledge is gained on the case by Stage 2 and therefore a natural follow through from this investigation is that the report on the complaint written for MRP would be the responsibility of the CE's office as independent of the service and the complainant. This again has shortened the process and therefore the timescale for the response to a customer. The Head of Service for the area which is the subject of the complaint is asked to sign off the report as being accurate, as far as is known. Experience in the CE's office of Member decision- making has been limited to date and is invaluable for continuing to improve reports to MRP.

As at 1<sup>st</sup> November, there have been two complaints considered at the MRP stage as a result of the revised procedure. The initial MRP accepted attendance by staff from the CE's office as "observers" to gain experience on how MRPs function. This proved an invaluable experience for staff. Members expressed themselves uncomfortable with staff attending and therefore the CE's office did not attend the second meeting. Whilst the MRP came to a decision, there were issues, primarily of procedure and Data Protection legislation that could have been clarified at the meeting and given Members confidence

that the full facts, as could be determined, were before them. It is proposed, therefore, to make adjustments to the MRP attendance to facilitate a better experience for Members including clarity on the issues, as well as enabling the CE's office to learn lessons from the Member led Stage 3 process to continue to improve in the provision of information for the future.

With this experience, and the more robust reporting to Members subsequent to the change in the Corporate Complaints policy and procedure on 1<sup>st</sup> April 2015, it is proposed that the MRP is developed into two distinct phases:

### **MRP phases:**

#### **Phase 1: The Open Session:**

This is where the Panel considers the material provided and has opportunity to ask representatives from the Chief Executive's Office for information or clarification of procedure. This may include information that Members would like to have received within the report but is restrictive and the reasons why.

The principal elements an MRP should be looking for are:

- Does the request for Stage 3 flow from the Stage 2 response(s)? This ought to have been addressed before the complaint was placed before Members, but on occasion the difference may be one of emphasis and this is acceptable.
- Does all elements of the complaint relate to a service failure and therefore are legitimate to be considered under the Council's definition of a complaint?
- Do the elements complained about refer to staff behaviour? Great care needs to be exercised where staff behaviour is involved as Members must not make decisions concerning disciplinary matters. However, if a Head of Service has failed to take action with regard to a potential disciplinary matter and Members consider action should have been taken, they are permitted to sanction the Head of Service for this inactivity as it is a management failure in delivering the service.
- In line with the Local Government Ombudsman's test, the MRP also needs to consider what personal injury the complainant claims to have suffered and whether that is a result of a service failure. If there is little or no **personal** injury claimed, the MRP needs to consider whether the issues complained of might still warrant Member intervention.

**Members should identify the various elements of a complaint if they are not clearly set out and ensure that each strand is considered and weight given to each before deciding whether a determination may be made immediately or whether the matter should be referred to a full hearing.**

#### **Phase 2: The Deliberation/Decision Session:**

At the conclusion of Phase 1, the CE's representatives may be asked to leave the room (in the same way as they would when all parties are asked to leave before Members commence their deliberations). The Panel members will then discuss the issues and reach a decision.

If Members agree a decision can be taken immediately, the MRP needs to provide an answer for each of the elements in the complaint and then provide any general comment. This will be recorded by the clerk and form the text of the decision notice which will be provided to the complainant and the CE's Office within five working days of the MRP meeting.

Should the Panel consider that a hearing is appropriate, it will adjourn and the clerk will inform the complainant and the CE's Office within five working days and seek to arrange a hearing at the earliest convenient opportunity and will arrange accommodation as well as invite an Independent person to join the Panel.

Should the Panel determine the matter at the MRP, the explanation to the complainant will contain a reference to the appropriate Ombudsman. It should also be made clear that the MRP's decision in this complaint is final as far as the Council is concerned and concludes the Corporate Complaints Procedure. The clerk ensures the Public Minute is produced and published on Modern.Gov within five working days of the MRP.

The clerk ensures that the complainant and the CE's Office is notified of the Panel's decisions and the CE's Office ensures that the CRM record is updated and closed and that an outline of the complaint, the decision and the directions/recommendations are provided at the next appropriate Adjudication and Review Committee meeting.

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