



ADJUDICATION & REVIEW SUB-COMMITTEE

REPORT

22 May 2012

Subject Heading:

STAGE 3 ESCALATIONS AND LGO
ACTIVITY 2011 - 2012

CMT Lead:

Ian Burns

Report Author and contact details:

Grant Söderberg,
Committee Administration
Town Hall
Romford RM1 3BD
Tel: 01708 433091
e-mail: grant.soderberg@havering.gov.uk

Policy context:

Corporate Complaints escalations and
LGO involvement with the Council

Financial summary:

There are no specific financial implications

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

This report is presented with a view to providing Members with an overview of the number and range of complaints residents (and some non-residents) of Havering have either considered needing the intervention of an appeal either to councillors or to panels of Independent Persons, or where they have taken their complaints to the Local Government Ombudsman and asked her to intercede with the Council on their behalf.

RECOMMENDATIONS

That the Sub-Committee note the contents of the report and decide whether there are any changes to the processes described to enhance the delivery of the complaints process.

REPORT DETAIL

1. INTRODUCTION.

- 1.1. At Annual Council, June 2011, it was announced that the Adjudication and Review Committee should be abolished and reconstituted as a Sub-Committee of the Governance Committee and that instead of meeting on a regular basis, it should meet only as required.
- 1.2. Because of the infrequency and ad-hoc nature of this arrangement, it has been considered prudent for Members to receive more formal reports on how the Corporate Complaints Process itself is faring and, where members of the public wish to request a hearing, for summaries of these appeals to be presented to them in order that Members could consider whether recommendations need to be made to services to ensure that as a result of the process, lessons learned were reflected in the evolution of the processes and procedures being used by those services to the benefit of residents and enhancement of the service. In addition, the informal briefings hitherto provided to Members on the activity of the Local Government Ombudsman, should be more formally presented, in order that Members have written records for reference.
- 1.3. During 2011, the Government moved to transfer powers of investigation of housing matters (such as repair and maintenance issues) in the public sector from the Local Government Ombudsman (LGO) (the Ombudsman) to the Housing Ombudsman and although during the year under consideration this has not commenced, the fact that it will start at some point in the near future means that Members should be aware of the additional Ombudsman route which will, in due course, fall to them to monitor.

2. STAGE 3 ESCALATIONS - BACKGROUND

- 2.1. During 2011, there was a marked upturn in the number of complaints being referred to Democratic Services with a request for a hearing. At the outset it was discovered that the referral process lacked cohesion. During 2010, the Council began a transition from one Customer

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Relations Monitoring (CRM) system to a newer, more flexible version. The three-stage process was published on the Council's web site and appeared to suggest that if a complainant was dissatisfied with an answer received from staff, a simple request for the next stage would suffice. There did not appear to be any audit of the first stage to check whether such an escalation was warranted and it was found that stage two responses very often merely reiterated those given at stage one.

- 2.2. The transition from stage two to stage three had always been robust in that a complainant who wished to appeal had to complete a form giving reasons why an appeal was required and not only showing how they had suffered injury, but what remedy they were seeking. This simple filtering was found to be inadequate in sifting out appeals which had no prospect of resolution or which were inappropriate for Members to consider. During 2011, the Adjudication and Review Sub Committee approved the addition of an Initial Assessment Panel (IAP) modelled on that used by the Standards Committee.
- 2.3. With two Members sitting informally to review and decide whether there were grounds for a hearing request to be formally heard, it soon became apparent that the already focused stage three Hearing Request form and associated procedure needed further refinement – the largest single impediment to the process being the discovery that in a significant percentage of cases, the original complaint (which had been addressed by officers at stages one and two) was no longer the same as that which the complainant wanted to place before Members. As stage three is a straight appeal against (perceived) wrong or inadequate answers provided by officers **to an original complaint**, this lack of congruency had to be addressed and the escalation process was revised and re-worded so that complainants were more clearly informed that they had to provide reasons **why** their complaint should be escalated and cite which points had not been addressed in order that, at stage two, senior officers could concentrate on specific areas and, if the complainant sought to escalate the matter further, good reason why had to be shown as well as congruency with the earlier stages.
- 2.4. Democratic Services sought to ensure that the CRM records showed a clear audit trail between all stages and, where that was found not to be the case, the IAP had a mechanism to return the matter to the complainant along with reasons for rejection and advice (if appropriate) in order that the most appropriate course of action could be taken to resolve the issue(s).

3. STAGE 3 ESCALATIONS – 1 April 2010 – 31 March 2011

- 3.1. It was during 2010 that the process for escalating complaints to Members was revised, but during the year 1 April 2010 to 31 March 2011, three complaints were referred to Stage 3. The first was an appeal under the Children Act and so Members were not involved. The second was notified in February 2011 and involved a planning matter

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which had already been considered – and rejected – by the LGO, but which the appellant still wished Members to consider.

- 3.2. This came before the IAP in April and a partial decision reached. The IAP had further questions for the Head of Development and Building Control and met again in May to consider the responses to its enquiry and deliver its final decision, which was to dismiss the hearing request as much of the complaint fell outside the Council's authority and should have been taken to court. What was left had either been appropriately dealt with by officers or lacked congruency. Having received the IAP's decision, the appellant went back to the LGO in July. The Council responded in August (providing the material considered by the IAP along with its decisions and reasoning). A Provisional View was received in September finding no fault in the way the Council had handled the complaint or in the appeal process and this was confirmed in October, thereby confirming the validity of the new appeal format and procedure.
- 3.3. The third hearing request (received in early March 2011) was held in abeyance for much of 2011 at the request of the appellant with the IAP not meeting until October and deciding that it should not be referred to a hearing as it lacked congruency – the stage 3 request being considerably different to the issues considered by officers at stages one and two. The appellant was advised to take the matters complained of back to the service at stage 2, whilst the remainder of the appeal had, in the opinion of the IAP, already been appropriately addressed or lay outside the scope of a hearings panel to remedy. To date there has been no request for the remaining issues to come back before Members.

4. STAGE 3 ESCALATIONS – 1 April 2011 – 31 March 2012

- 4.1. As stated above, during 2011 itself, there was (in terms of recent history) a significant increase in hearing request referrals. In summary they were:
 - 4.1.1. October 2011: Introductory Tenancy Hearing. Not upheld
 - 4.1.2. November 2011: IAP Private Sector Leasing issues. Rejected, lacked congruency. No further action.
 - 4.1.3. Hearing request received in October concerning issues relating to housing allocations (request to exchange properties). Notices issued, then Housing changed its stance and allowed the exchange to proceed. No further action.
 - 4.1.4. Complainant concerned about the status of the road in which he lived was being changed illegally. Letters were exchanged, but the complainant withdrew. No further action.

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- 4.1.5. Hearing request received in November in respect of a Housing Register complaint. Papers were received, but then the complainant did not proceed. No further action.
- 4.1.6. In December, a hearing request was received in respect of Housing Needs. The IAP met in February and considered that further information was required. Having made the request, Housing Services made the complainant an offer which has recently been accepted. No further action.
- 4.1.7. Also in December, a hearing request was received in respect of Private Sector Leasing issues. The IAP met in February and decided that the complainant had provided no evidence to warrant a hearing.
- 4.1.8. In February, the Council received a complaint about the behaviour of Wardens. The IAP did not sit until April and decided that the complainant's central issue had not been adequately addressed. It adjourned in order that Housing Services could deal with that and report back. It met in early May and considered that this report was inadequate and that the matters contained in the original complaint ought to be investigated by an Independent Investigating Officer and a further report submitted to it. The IAP adjourned again for this to take place and is due to reconvene in June.
- 4.1.9. During 2011/12, Homes in Havering held two Stage 3 hearings. Both were held in July and both concerned complaints about repairs and maintenance. In one the complaint was partially upheld, in the other it was fully upheld.

5. STAGE 3 ESCALATIONS – Changes to the Process

- 5.1. Since the beginning of the revised procedure in which the Initial Assessment Panel began considering the merits of hearing requests, no cases have (to date) been considered by a hearings panel. In each case, the subject has been found to fail the test for a formal hearing.
- 5.2. It is acknowledged that there is a fine line between the IAP determining whether the subject matter has merit and actually making decisions. To date, this balance has been achieved in each case, and the decision by the Chairman to be partnered by different committee members for each referral, was aimed at ensuring that Members obtain exposure to the complaint process and have experience in handling them.
- 5.3. During the same time, it has been necessary for the process to “evolve”. This has been achieved by modifying parts of the written information provided as guidance to Members and in the manner in which complainants are kept informed about developments. A copy of the current documentation used is appended to this report (**Appendix A**).

6. OMBUDSMAN ACTIVITY – 1 April 2011 – 31 March 2012

- 6.1. During the past year the LGO has faced similar cuts to her finances as any in the public sector, whilst projected expansion – notified to Members previously (such as involvement with the internal management of schools) has been rescinded since the last General Election and the widespread creation of Academies over which the LGO has no jurisdiction. On the other hand, the Ombudsman’s powers have been increased in areas such as adult and child social care, whilst at the same time, the move to empower the Housing Ombudsman with repair and maintenance responsibility for social housing continues to move slowly in the background.
- 6.2. It has been interesting to note that over the past twelve months, the LGO has had less cause to contact the Council than hitherto (see **Appendix B**). In particular (and in light of the Ombudsman’s “Council First” presumption, rather surprising) was the fall-off in “Premature” cases or referrals to Council for processing through the corporate complaints procedure. In general, the amount of compensation paid out by the Council in “local settlement” awards, has been lower than in previous years, but this was counter-balanced by the large award made to a complainant in a housing case in which the Ombudsman found maladministration.
- 6.3. Whilst that held true for most of the year, the Council experienced a multi complainant challenge (concerning Will Perrin Court) from a number of residents (10) and, as the Ombudsman wished to pursue enquiries with both Planning and Housing, the number of enquiries rose sharply by 20 – even though this represented one issue.
- 6.4. The Council continues to enjoy good relations with the Ombudsman’s various investigators which has proved to be a valuable factor in ensuring that the Council’s arguments are given serious consideration and it is good to be able to report that overall, the response times from all services has been (generally) very good; the only exceptions being in cases where more than one service was involved or where the issues were unusually complex.
- 6.5. Recently, the Ombudsman has sought to change the content of her Annual Letter as this is considered to be “the” formal communication with individual Chief Executives across the country. At a briefing earlier this year, she announced that she would be using the letter as a means of sign-posting changes in good practice and providing more support and feed-back – as opposed to the previous diet of critical statement. It remains to be seen whether this change to a dialogue approach is actually implemented this year. Draft figures have already been received - and challenged where necessary (with results usually in the Council’s favour) – and the Annual Letter itself should be with the Council some time in July and will be presented to the next Sub-Committee meeting.

IMPLICATIONS AND RISKS

Financial implications and risks:

There are none associated with this report, though the Council could be exposed to a wide range of financial penalties as a consequence of Ombudsman decisions – and those of Hearings Panels. It is therefore of paramount importance that Staff and Councillors ensure that members of the public receive high quality service in all instances and that any dispute is resolved swiftly and at the point of contact wherever possible.

Legal implications and risks:

There are none directly associated with this report, though there could be outcomes and consequences arising from complaints which might impact on the legality of how the Council delivers its services.

Human Resources implications and risks:

There are none associated with this report, but staff need to receive training in how to deal with all customers and how to assess and address complaints and middle and senior management need to be supportive and be able to be imaginative and show sensitivity when proposing resolutions to the problems of individuals – which itself could require training to develop the necessary skills commensurate to their responsibility.

Equalities implications and risks:

There are none associated with this report, though a number of the issues which were brought to Members' attention either by the Ombudsman or by way of the appeal process have highlighted procedures and policies which have either not been applied appropriately or have been rigidly adhered to even when there was clear evidence that officers had the scope to use discretion and did not do so.

BACKGROUND PAPERS

None

Stage 3 Documents: