

STAGE THREE CORPORATE COMPLAINTS & HEARINGS PANELS

Background:

1. On 1 April 2015 the Council launched a revised Corporate Complaints procedure to remove variations of approach between services and to streamline and speed-up the overall process.
2. The revision essentially kept the three stage approach, but made the following changes:
 - Stage 1 remains with the service and it has the opportunity to resolve the complaint.
 - If the matter cannot be resolved at Stage 1, the complaint is passed to the Chief Executive's Office (CE's Office) where Complaints Officers – investigate the complaint independently of the Service. Any outcomes/decision are signed-off by the Chief Executive.
 - Stage Three is still the preserve of Councillors but the preparation of the case is undertaken by the CE's Office.
3. In addition there are a number of features in the revised procedure which changed it significantly from the previous process:
 - a. On-line complaints are the preferred method of contact (or those which are received by the call centre & put onto online forms).
 - b. Only those elements recorded on the Stage One form are to be considered at Stages Two and Three.
 - c. The time-scales have been amended to: 10 working days for Stage One, 25 working days for Stage Two and a maximum of 30 working days for Stage Three (if required) which covers the period from receipt of a completed request from (from the complaints team) to the holding of the first stage Member Review Panel (if required).
 - d. There is no need for Democratic Services to be involved in information collecting (for Stage Three) as the CE's Office prepare and provide all the material to go to Members when notifying Democratic Services that a complaint is to be considered for escalation to Stage Three. – Every effort is now being made to ensure that complaints are resolved before or at Stage Two.

Initial Consideration by the Chairman

Under the terms of the Complaint Policy and Procedure, the Chair of Adjudication and Review takes the decision whether to escalate the complaint to Stage 3, or not.

The Chairman/Vice Chairman would meet with a member of the Democratic Services team to determine whether the case can be decided at that point or whether a full hearing (i.e. A Member Review Panel part 1) should be arranged

The case officer (CE's office) will prepare a briefing note, no more than two pages, summarising the complaint at Stages 1 and 2, and giving an outline of the Stage 3 complaint. The Chairman/Vice Chairman will then make a decision, based on the facts, as to whether a Member Review Panel is required or not. The clerk will arrange to meet informally with the Chairman (or Vice-Chair) to get their view. The clerk will

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produce a brief note of this discussion including details of the reasons for the Chairman's decision.

Escalation to Stage 3 of the process is not automatic; the decision on escalation will be taken by the Chairman/Vice-Chairman of the Adjudication & Review Committee. If escalation is not agreed, the clerk will write a letter to the complainant notifying them of this and giving details of the Ombudsman. An indication of the reasons for this decision should also be included in the letter. If escalation to a Member Review Panel is agreed, the following procedure should be followed:

Preparing the case papers:

4. The new procedure has been radically simplified for Democratic Services personnel involved in managing Stage Three of the Complaints Process.
5. Notification of the original stage 3 request will come from the CE's Office – usually by e-mail. When received, create a folder in Outlook and also one in the shared area: BSSADMIN / Committees / Adjudication / Hearings Panels / Casework / Year and in the name of the complainant and then save the e-mailed information in a sub-folder "case papers".
6. Check the information provided by the CE's Office to ensure that it is complete and legible. It ought to be in the form of a series of PDFs which can be combined within a single PDF (Using Adobe Acrobat Pro / Combine / Merge files into a single PDF). Insert a front-piece with a brief statement about the nature of the complaint.
7. Check availability for a room (CR1 or 2 3A and 3B work well for Member Review Panels (MRPs)).

Choosing a Panel:

8. The first point of contact would be the Committee's Chairman (unless s/he was a Ward Councillor where the complainant lived, or was otherwise unavailable). In that case, one of the two Vice-Chairmen should be approached. If the date is not acceptable and you have flexibility, then it will be possible to change the date at this stage.(the complainant does not attend at this stage). Two other Members of the Adjudication and Review Committee are required and the Panel is complete. As the process falls within the scope of the 1972 Local Government Act, the Agenda will need to be published five clear working days before the meeting through modern.gov.
9. The preparation of the agenda is the same as the preparation of any committee agenda but it must be remembered that the PDF containing the complaint details is EXEMPT (Paragraph 1 of Section 12A of the 1972 Act) and so you MUST ensure that this is engaged when you prepare the Agenda. You will have two agendas: one will be the Public Pack – which will contain only the front information and the other will be the Private Pack which will contain the complaint PDF. You will need to have four copies printed (One for each of the councillors on the Panel and one for yourself as clerk. If you can keep your copy "clean" then it can be sent to the complainant at the end of the process. If it is "used", then a further copy will be necessary for the complainant).

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10. Prepare the request as for other committees, but if there are photographs in colour, then consider requesting full colour when placing the print request. When the agendas are returned to you, send each of the panellists a copy. A copy is not sent to the complainant at this point.

The Member Review Panel (Part 1):

11. Most Stage Three reviews are dealt with at this point. Panels have two options under the new process: Consider the complaint and reach a decision at this meeting or adjourn and reconvene for a formal hearing when it will be joined by an Independent Person (drawn from the Council's Pool of IPs) and where the complainant, representatives from the CE's Office and Service are called to answer questions put by the Panel. The Panel will have the support of a legal representative.
12. The meetings are – initially – public meetings, but the public will be formally excluded ahead of the complaint being considered. MRPs usually take place early evening and are for the three councillors forming the panel and the clerk only. In addition, one or two members of staff from the CE's Office will be available in their office (not in attendance at the hearing). This is to facilitate Members should any questions of fact arise or there be a need to clarify anything within the material provided. The clerk would need to ask the Chairman to briefly adjourn the meeting whilst any required clarification was sought from the CE's office.
13. The process is initially led by questions posed by the clerk and the first of these is to see whether the panel considers the complaint should be referred to a formal Hearing or could be determined immediately. If the former course of action is decided upon, there is no further discussion about the case and the panel either moves onto the next complaint, or, if there is no other work for it to consider, **adjourns** pending the convening of the formal Hearing which should be arranged within 10 - 15 working days if that is feasible or as soon as practicable if not.

It should be noted that the MRP meeting and the Hearing are two separate elements of the same event.

15. The Panel has three options as the basis for its decision:
 1. To uphold the complaint.
 2. To partially uphold the complaint
 3. Not to uphold the complaint

In each case, the reasons for the decisions will be given. A summary of the decision will be sent to the complainant and to the service (including the Group Director and the Chief Executive & the CE's complaints office). The CE's office and service should be notified of the outcome prior to the notice of decision being sent to the complainant. This however will be for information only.

16. In the case of a financial award to the complainant being agreed and/or there being a requirement on the complainant to provide proof of financial loss etc,

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this should be sent directly to the service and the service should arrange any payment. Correct contact details for the service should be established prior to the hearing and included within the decision letter. The letter should state that the complainant has 28 days from receipt of the decision letter to forward any required proof of loss etc. It should be noted that compensation from e.g. housing would be put to reducing any outstanding rent arrears first rather than a full 'cash' payment. This may apply to other debts to the Council as well such as Council Tax. This would be a matter for the service.

The Member Review Panel (Part 2) - The Hearing - Preparation:

17. Having considered that the complaint should be dealt with by a formal hearing, the Panel waits for the clerk to arrange that hearing and will reconvene and be joined by an Independent Person (IP) from the Dem Services list (who has no voting rights). The clerk will note any dates or times when any of the Panel members cannot attend. The intention will be to try and arrange the hearing for a date within the next 10 – 15 working days or as soon as practicable if not.
18. The next task for the clerk is to notify the CE's Office and the Head of Service and ask for dates to avoid (commitments of the Head of Service or representative(s) from the CE's Office need to be factored into the arrangements). The clerk will then contact the complainant (either by letter or e-mail – or, if appropriate, by telephone (confirming any arrangements in writing) – to ascertain when the complainant will be able to attend. The clerk will also contact Legal and ask for a legal officer – conversant with the type of complaint being considered – to be present at the hearing in case a point of law arises upon which the Panel would need guidance.
19. The room booking is important at this stage. For a hearing, committee rooms 1, 2 or CR3A and 3B should be considered as these rooms permit a more flexible table arrangement (see below). In addition, thought should be given about accommodation ahead of the hearing for the complainant (and his representative or supporter(s)) and also for officers. Waiting rooms should be allocated if available. If there are no other committee rooms available, the clerk will have to try and identify space wherever possible and ensure that it too is booked (if necessary).
20. Consideration may need to be given to the mobility of the complainant and if there are difficulties, the clerk will need to ensure that accommodation is obtained which is the most appropriate for addressing any disability the complainant has.
21. Conventionally the complainant is offered either, a morning, afternoon or evening option for a hearing time. Once a date and time have been agreed the clerk notifies the Panel members and contacts members of the pool of Independent persons to find an IP to sit with the Panel.
22. The clerk then sends the IP a copy of the agenda and also sends a copy of the agenda to the complainant accompanied by a copy of the hearings procedure notes – which will be found in the base docs folder which can be found in BSSADMIN / Committees / Adjudication / Hearings Panels. Copies of the agenda (the agenda for part 1 of the hearing should be used with a covering

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letter giving details of the arrangements for the part 2 meeting) are also sent to the Head of Service and the CE's Office and to three Councillors attending.

23. The clerk should if possible make name-plates for the complainant (and their representative(s) if appropriate) and for any officers attending who do not have name-plates already made up.

The Member Review Panel (Part 2) - The Hearing:

24. On the day of the hearing, the clerk makes final checks to ensure that the room is set up for the hearing. If possible, this should be in the form of a "hollow square" with the complainant(s) facing the Panel and officers facing the clerk on the other two sides. The clerk sets out the name-plates etc. The clerk should also "meet and greet" the complainant and see to any needs and answer any questions about procedure etc. The clerk should also confirm that officers are ready. If either party has called "witnesses", they should be informed that they are to wait until called and, reminded that having given their evidence, they must leave the room and either return to the waiting-room or are free to leave.
25. At the hearing, the complainant (with or without representation) and a representative from the Service as well as a representative from the CE's Office, will be present. The Hearings Panel may, at its discretion, consider additional material presented to it by any of the parties, but otherwise the complaint is considered on the basis of the original documents.
26. The Clerk reminds those present that the hearing is to be conducted by question and answer. The reasoning behind this approach (rather than an adversarial style) is that it leaves the direction – and duration – of the hearing in the Panel's hands as it will ask only those questions it requires in order to provide it with the basis for its deliberations and decision.
27. The Panel should permit the parties to make opening and closing statements and the Chairman should ask the parties whether they have had an opportunity to say all they want on the matter – though there might be a danger that this could re-open debate and so should be used with care.
28. When the parties have left the room (including the CE's representatives), the Panel deliberates on what it has heard. To assist it, a legal representative will be available with any advice which members of the Panel might require.
29. Once the Panel has reached its decision(s) concerning the complaint, the clerk will prepare the Decision Notice which the Chair will have an opportunity to comment on after which it will be sent within five working days to the complainant, the Service and the CE's Office.

Concluding the Process:

30. The Decision Notice may have recommendations or directions for the Service to action. The Head of Service (if appropriate), should confirm what action will be taken, to the complainant in writing within 15 working days of receipt by the service of the Decision Notice. The clerk must be sent a copy of that response to add to the case file.

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31. The Minutes of the Hearing will be completed within 28 days of the hearing and once signed by the Chairman, the Minutes (which will contain only the general elements of the complaint) will be published through modern.gov thereby closing the process in the public domain.
32. Once the case has been completed, the CE's Office will update the CRM record by adding any final notes and attaching a copy of the Decision Notice.