

Section 31

Appeals and Complaints Panel

Terms of Reference

1. STATUS

- 1.1 The Appeals and Complaints Panel is a committee of the Council with the purpose of:
- (a) hearing employee appeals in respect of all employees of the Council, with the exception of the Chief Executive, the Section 151 Officer and the Monitoring Officer for whom other national and local procedures take precedence;
 - (b) hearing appeals in respect of homelessness decisions made under Part VII of the Housing Act 1996 (as amended);
 - (c) hearing requests for review of decisions delegated to officers in respect of various Housing issues;
 - (d) dealing with official complaints under Stage 4 of the Council's Complaints Procedure;
 - (e) dealing with Ombudsman complaints where these cannot be settled by Officers in accordance with delegated powers.

2. MEMBERSHIP AND METHOD OF APPOINTMENT

- 2.1 The Appeals and Complaints Panel will comprise not more than 5 eligible Members of the Council appointed in compliance with Section 15 of Schedule 1 of the Local Government and Housing Act 1989, concerning political balance. The provisions of Council Procedure Rule 21 will apply in respect of the quorum required. A Member should not hear an appeal or complaint in circumstances which might give rise to doubt as to their impartiality. Accordingly, a Member should not sit at the hearing of a case if he or she has any prejudicial or professional interest in the case or had an involvement in the original decision against which an appeal or complaint is being made.

3. CHAIRMAN

- 3.1 At each meeting of the Appeals and Complaints Panel the Chairman shall be appointed by and from the Members of the Council present.

4. ATTENDANCE BY COUNCILLORS WHO ARE NOT MEMBERS OF THE PANEL

4.1 Council Procedure Rules 6(6) and 19 will apply.

5. FREQUENCY OF MEETINGS

5.1 Meetings of the Appeals and Complaints Panel will be convened by the Chief Executive normally within 30 working days following receipt of notice of an appeal or complaint except where statute requires otherwise e.g. homelessness appeals. The Chief Executive will give notice in writing at least 10 working days in advance of the time and place of the hearing.

6. AGENDA

6.1 Prior to the meeting of the Appeals and Complaints Panel, the Chief Executive will circulate to all elected Members on the Panel, Agenda and Reports to be considered by the Appeals and Complaints Panel.

7. PROCEEDINGS

7.1 The Chief Executive (or his nominee) shall be the Clerk of the Panel

7.2 The provisions of Schedule 12A of the Local Government Act, 1972 (as amended), in respect of exempt information will apply.

8. REPORTS TO COUNCIL

8.1 Reports in the form of Minutes detailing action taken under delegated powers and recommendations on any related matter will be submitted to Council which may accept, amend or reject any recommendation but not a resolution made by the Appeals and Complaints Panel.

9. EXCHANGE OF DOCUMENTS

9.1 At least 8 working days before the date of the hearing the parties will exchange statements and relevant documents which it is intended shall be presented to the Appeals and Complaints Panel. Copies of these documents should also be sent to the Chief Executive.

10. FUNCTIONS AND PROCEDURE

10.1 To undertake the following functions in accordance with the scheme of delegation and codes of conduct

10.2 To be responsible for and to hear matters in accordance with Annexes 1, 2 or 3 as appropriate to the appeal or complaint being considered by it.

11. DELEGATED POWERS

- 11.1 The Appeals and Complaints Panel is empowered to deal with any of its functions and has delegated authority to resolve any appeal or complaint referred to it for determination by Council. In the case of equality of votes, the Chairman shall give a casting vote provided he/she has already voted in his/her capacity as a member of the Appeals and Complaints Panel.

12. OTHER MATTERS

- 12.1 Where not already provided for above, the Council's Procedure Rules for the regulation of proceedings and business will apply.

Annex 1

Employee Appeals

1. FUNCTIONS

The Appeals and Complaints Panel is responsible for dealing with appeals relating to a decision by the Chief Executive or relevant Director to take formal disciplinary action against an employee including dismissal from the service of the Council; and

An appeal hearing is not intended as a rehearing of the original matter. Rather it is an examination of how the Chief Executive or relevant Director arrived at their decision and an opportunity to focus on specific factors which the employee considers to be unfair, or which may have received insufficient consideration, in arriving at the decision.

The employee will have the right to be represented by a Trade Union representative or some other person of their choice.

2. PROCEDURE

The Appeals and Complaints Panel will hear the matter in accordance with the following procedure:

- a The Chief Executive or relevant Director will explain why they reached their decision. The investigating officer should also be in attendance to answer any relevant questions which might arise;
- b The employee, or their representative, will have the opportunity to ask questions of the Council's officers. They will then have the opportunity to make a submission based on the written grounds for appeal, which may include calling witnesses on the employee's behalf;
- c The Chief Executive or relevant Director will have the opportunity to ask questions of the employee and/or their representative;
- d Members of the Appeals and Complaints Panel may ask questions of the Council's officers, and of the employee, and/or his/her representative, and will then invite both parties to make brief closing statements, if they so wish;
- e The Chief Executive or relevant Director, the investigating officer acting for the Council, the employee and their representative, plus the clerk to the Panel and any Human Resources or Legal advisor(s) to the Appeals and Complaints Panel shall then withdraw;

- f The Appeals and Complaints Panel shall deliberate in private, only recalling the Council's representative and the employee and his/her representative to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return, notwithstanding that only one party may be concerned with the point giving rise to doubt.
- g The Appeals and Complaints Panel may request that the Clerk, Human Resources and Legal advisor(s) should attend any part of the Panel's deliberations to advise them on matters of law or procedure;
- h At the conclusion of their deliberations, the Chairman may announce the decision(s) of the Appeals and Complaints Panel to the parties concerned. However, the Chairman will within 5 working days write to the employee informing them of the decision(s) of the Panel.

Annex 2

Housing Related Appeals and Complaints

1. FUNCTIONS

The Appeals and Complaints Panel is responsible for dealing with appeals and complaints relating to:

- (i) any decision relating to Part VII of the Housing Act 1996 (as amended) (Homelessness) with regard to the following issues
 - eligibility for assistance under Part VII
 - whether a duty is owed to an applicant and, if so, what duty
 - whether a case should be referred to another authority
 - the suitability of accommodation offered in the discharge of a duty owed under Part VII
- (ii) any decision delegated to an officer in respect of various Housing issues, for example
 - breach of tenancy conditions
 - neighbour complaints
 - access to the Housing Register
 - tenancy succession
 - refusal of mutual exchange

2. PROCEDURE

The Appeals and Complaints Panel will hear the matter in accordance with the following procedure:

Homelessness

- a Following an officer review of the applicant's Part VII application, if the original decision is upheld, the applicant will be notified of the decision in writing and of his/her right, if still dissatisfied, to ask for a further review to be carried out by the Appeals and Complaints Panel
- b The Panel shall be convened within 21 days of receipt of a request for a further review
- c The Head of Housing will submit a report to the Panel setting out the circumstances
- d The applicant shall be invited to attend to state his/her case and shall have the right to be represented/accompanied by a legal representative or any other person of his/her choice.
- e The applicant shall be provided with a copy of the Head of Housing's Report and will be requested to supply a statement of his/her case at least 5 8 working days prior to the meeting
- f Members of the Panel may ask questions of all present as necessary and will deliberate in private. The Panel may call for legal or procedural advice at any time during its deliberations
- g The Panel, having considered all the information, shall determine whether
 - (i) to uphold the original decision or
 - (ii) to allow the appeal
- h If the appeal is allowed, the Panel shall determine what action should be taken
- i The applicant shall be notified in writing of the decision and the reasons for the decision within 5 working days of the decision being made (or as soon as possible if this cannot be complied with). This must be within 56 days of the date on which the review was requested unless a longer period has been agreed in writing

Review of Delegated Decisions

- a If, following a request for an officer review, the original decision is upheld, the applicant will be notified of the decision in writing and of his/her right, if still

dissatisfied, to ask for a further review to be carried out by the Appeals and Complaints Panel

- b The Panel shall be convened on receipt of a request for a further review and the Head of Housing shall submit a report to the Panel setting out the circumstances
- d The applicant shall be invited to attend to state his/her case and shall have the right to be represented/accompanied by a legal representative or any other person of his/her choice.
- e The applicant shall be provided with a copy of the Head of Housing's Report and asked to supply a statement of his/her case at least 8 working days prior to the meeting
- f Members of the Panel may ask questions of all present as necessary and will deliberate in private. The Panel may call for legal or procedural advice at any time during its deliberations
- g The Panel, having considered all the information, shall determine whether
 - (i) to uphold the original decision or
 - (ii) to allow the appeal
- h If the appeal is allowed, the Panel shall determine what action should be taken
- i The applicant shall be notified in writing of the decision and the reasons for the decision within 5 working days of the decision being made (or as soon as possible if this cannot be complied with). This must be within 8 weeks of the date on which the review was requested unless a longer period has been agreed in writing

Annex 3

Complaints

1. FUNCTIONS

The Appeals and Complaints Panel is responsible for dealing with

- (i) any complaint which has reached Stage 3 of the Council's Official Complaints Procedure where no resolution has been achieved at Stage 1 or 2.
- (ii) any complaint made to the Local Government Ombudsman that cannot be dealt with by officers under delegated powers
- (iii) any other matter relating to complaints referred to it by the Council

2. PROCEDURE

The Appeals and Complaints Panel shall hear the matter in accordance with the following procedure:

- 2.1 Members of the Panel can call for information, documents and the attendance of Chairmen, Members and responsible officers to give evidence
- 2.2 The procedure for determining and adjudicating on Stage 3 complaints is set out below
 - a The complainant will be
 - informed of the time date and place of the meeting to consider his/her complaint
 - invited to attend the meeting and will be given the opportunity to present his/her case
 - informed that an officer from the relevant Department will be given the opportunity to respond to the complaint
 - invited to submit a written statement detailing the substance of the complaint so that Members of the Panel can be fully acquainted with the details

- sent at the same time as Members of the Panel a copy of the agenda for the meeting which will include the report papers, the complainant's statement and a statement prepared by the relevant Director or Head of Service
- b At the meeting the Chairman will make a brief introduction as to the purpose of the meeting and will then request the complainant to make any statement s/he may wish to make in support of his/her case. An appropriate officer from the relevant Department will then be requested to do the same
 - c There will be the opportunity for witnesses to be called and questioned as part of the investigation of the complaint
 - d Each party will then withdraw to allow Members of the Panel to consider and adjudicate on the complaint. Members may request advice on any point of law or procedure during their adjudication. Either party may be recalled to explain any points of fact relevant to the case. If it is necessary to recall one party, both parties should be recalled so that the matter is dealt with in the presence of both parties
 - e Having adjudicated, the Panel will recall both parties and the results of their adjudication will be announced. Complainants shall also be informed in writing of the decision together with reasons for the decision as soon as possible following the meeting
 - f The complainant will be advised that if still dissatisfied the next and final step is to complain to the Local Government Ombudsman

2.3 The procedure for dealing with the outcome of any complaint made to the Local Government Ombudsman will be as follows:

- a The Chief Executive (or his nominee) will present a report on the complaint, inviting other officers to provide supplementary information/evidence
- b The Chairman will lead Members' questions, requesting any further information as required
- c Members may request advice on any point of law or procedure during their adjudication

Note If a complainant indicates that s/he does not wish to attend a meeting of the Panel, or fails on two occasions to attend without reasonable explanation, the Panel shall proceed to deal with the matter in the absence of the complainant.

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