

## **Report to Overview & Scrutiny Committee**

**Date of meeting: 12 July 2011**

**Report of: Constitution & Member Services SSP**

**Subject: Member Complaints Panel – Limits of Jurisdiction**

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**Committee Secretary: Adrian Hendry (01992 56 4246)**

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**SCRUTINY**



**Epping Forest District Council**

### **Recommendations/Decisions Required:**

- (1) That revisions to the limits of jurisdiction of the Complaints Panel be approved;**
- (2) That a report be submitted to the Council recommending that Annex 1 (section 1) to the terms of reference of the Complaints Panel be amended as set out in paragraph 3 and published in the Constitution.**

### **Report:**

1. The Member Complaints Panel (CP) is responsible for considering complaints at Step 4 in the Council's complaints procedure. Currently, certain types of complaints fall outside the limits of jurisdiction of the Panel and cannot therefore be considered at Step 4. These limits are published on page C23 of the Constitution as an annex to the terms of reference of the Complaints Panel.
2. These exclusions are:
  - (a) a complaint about a situation which arose more than 12 months before it was brought to the attention of the Council (unless new information has since been identified which would justify a further review of the complaint);
  - (b) where an alternative and formal right of appeal exists (e.g. Planning Appeal; Housing Appeal; Benefits Tribunal) and for which the complainant failed to exercise his/her right to appeal within the specified timescale, or has not yet appealed, or has already made such an appeal;
  - (c) matters which would best be dealt with by the Courts, e.g. Human Rights issues;
  - (d) matters which would affect the majority of the people in the Epping Forest District, e.g. a complaint that "the Council Tax is too high";
  - (e) complaints for which a resolution could only be achieved through a change in the law, or a change in the policies of another organisation;
  - (f) complaints about policies currently subject to a review, or about matters for which

it has already been agreed that a policy needs to be reviewed or formulated. (Note - this exclusion does not preclude the consideration of a complaint about the way a policy has been administered, e.g. an allegation that a policy had been administered unfairly, or that the Council had fettered its discretion);

(g) complaints about the frequency of delivery, or the level of a service which is subject to contract conditions (again, a complaint about the way a contract service has been delivered could still be considered by the CP);

(h) where the customer elects to pursue legal action as a means of determining their complaint. (Note - this would not preclude the CP considering non-legal elements of a complaint, e.g. an allegation of unreasonable delay by the Council in undertaking a statutory or agreed course of action);

3. In recent years, other types of complaints have been made for which consideration by the Complaints Panel was found to be inappropriate. It is therefore recommended that the limits of jurisdiction should be extended to encompass these as well:

**(a) If, at Step 1, 2 or 3 in the complaints procedure, the complainant has already been offered the maximum remedy that the Complaints Panel is empowered to offer.**

Reason – the complainant could gain no additional benefit from a further review at Step 4.

**(b) When there is no evidence that the complainant has suffered any harm or injustice even if there has been administrative fault by the Council.**

Reason – unless the complainant can show that they have suffered an injustice, there are no matters that require rectification. Members are asked to note that the Local Government Ombudsman applies the same exclusion.

**(c) If, at Step 1, 2 or 3 in the complaints procedure, the complainant has already accepted the proposed remedy and has formally confirmed that he or she has done so in full and final settlement of all of his or her complaints.**

Reason – formal acceptance of a remedy concludes the complaint.

**(d) If, by going to Step 4, the complainant would then be left with insufficient time to subsequently submit a complaint to the Local Government Ombudsman within the Ombudsman's 12 month time limit.**

Reason - the Ombudsman will not usually consider a complaint if more than 12 months have elapsed since the complainant first became aware of the problem. If the Council was to insist that all complainants always go through Step 4 before being able to make a complaint to the Ombudsman and, by doing so, the complainant is then unable to comply with the Ombudsman's 12 month rule, this would leave the Council vulnerable to a further complaint that its actions prevented the complainant from being able to exercise their right to request a final review by the Ombudsman.

**(e) If the complaint has already been determined by the Local Government Ombudsman.**

Reason – the decisions of the Ombudsman take precedence over the decisions of

the Council.

4. Members are asked to note that, if a complainant feels they have been wrongfully denied a Step 4 review, then they are entitled to make that complaint to the Local Government Ombudsman.

### **Next Steps**

5. If the Panel approve the proposed changes they should recommend these for adoption to the Council.