

# ***Report to the Council***

**Committee:** Constitution and Members' Services Scrutiny Panel      **Date:** 27 March 2012

**Chairman:** Councillor David Stallan

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## **HOUSING APPEALS AND REVIEW PANEL – TERMS OF REFERENCE**

### **Recommending:**

**(1) That that the existing order of proceedings at meetings of the Housings Appeals & Review Panel be retained but a new paragraph (to be numbered (7)) be added to the Panel's Terms of Reference as follows:**

**“(7) If requested by the appellant/applicant or their representative, the Chairman may agree to (6)(b)-(d) above taking place after (e)-(g) and to (h) and (i) being reversed”.**

**and that the Constitution be amended accordingly;**

**(2) That the appellant/applicant be informed prior to the meeting of their right to change the order of presentation if wanted, as set out in (1) above;**

**(3) That the arrangements set out in recommendation (1) above be reviewed after six months; and**

**(4) That paragraph 1(i) (relating to the banding of an applicant, in accordance with the Housing Allocations Scheme in being at the time of the decision) be removed from the Terms of Reference of the Housing Appeals and Review Panel and the Constitution be amended accordingly.**

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### **Report:**

1. We have reviewed two aspects of the Housing Appeals and Review Panel (HARP) Terms of Reference: the order of presentation at Panel meetings and the exclusion of appeals against banding decisions under the Housing Allocations Scheme.

#### **Order of Presentation of Cases to the Panel**

2. The current order of business for consideration of cases by the HARP provides for the applicant/appellant to present their case and answer questions first, followed by the appropriate Housing Officer presenting his/her case and answering questions. Whilst this follows the order of most appeal proceedings it was considered by officers and some members that it did not lend itself particularly well to meetings of the HARP.

3. An applicant/appellant normally attends meetings to present their case without being represented by a professional advocate. Despite being advised in advance of the meeting of the procedure to be adopted and the Chairman of the Panel, as part of his opening remarks, attempting

to put an applicant/appellant at ease they appear frequently to be overwhelmed facing a Panel of normally five members in a fairly formal setting.

4. As a result, since an applicant/appellant has to present their case first, some members of the HARP felt that many struggle to follow the procedure and present a reasonable case. Often it is not until replies are given to questions from the Housing Officer and members of the Panel that the full extent of the applicant's/appellant's case becomes apparent.

5. Not all members of the HARP were of this view and a request was made to the Standing Panel to consider the matter. We were informed that changing the Terms of Reference so as to change the order of proceedings, with the Housing Officer presenting his/her case first would have the following benefits:

(a) the HARP would receive the full facts of the case at the outset as these are set out in the officer's report; this would enable members to understand better the submissions made subsequently by the applicant/appellant;

(b) the applicant/appellant would have time to settle in the meeting before being expected to address the Panel; would have a better appreciation of the proceedings having witnessed the way in which the officer presents his/her case and answers questions on it; and, should be better prepared when it comes to their turn to present their case.

6. We understand that the Director of Corporate Support Services was consulted on a change of order of business and had no objection. The only observation she made was that some professional representatives (e.g. solicitors and barristers), would be used to an appellant presenting their case first in an appeal environment, and might object if this order is not followed. Accordingly, she suggested that if a change was made, if requested by the applicant/appellant or their representative, the Chairman could agree to the applicant/appellant continuing to present their case first.

7. In any event, the Terms of Reference of the HARP still give it discretion to reverse the order in which the case of the officer and the applicant/appellant are presented, provided that both parties agree.

8. After discussing the issues, we have come to the conclusion that there is no reason to change the current order of events as the HARP has asked for an additional paragraph to be included which would allow an applicant/appellant to request a change in the order of presentation if they so wish. We consider that this would give sufficient flexibility to allow the HARP to change the order if considered appropriate.

10. The Overview and Scrutiny Committee accepted our views and we recommend as set out at the commencement of this report.

### **Appeals against the Banding of an Applicant**

11. Following concern about the cost and member and officer time involved with housing appeals about some relatively minor issues, the Council agreed that from the commencement of the municipal year 2010/11 the Terms of Reference of the HARP should be amended to allow appeals and reviews only in respect of specified issues.

12. At that time, one of the issues recommended by officers for removal from consideration by the HARP was appeals about the banding of an applicant in accordance with the Council's Housing Allocations Scheme. However, members did not accept that and the HARP continued to consider such appeals.

13. We have been advised that since May 2010, the HARPI has considered nine appeals about the banding of an applicant including seven appeals since August 2011. In all cases the HARP has upheld the officers' decisions and dismissed the appeals.

14. The majority of these appeals concern priority given for medical conditions and as the Housing Allocations Scheme specifies that medical priority is determined by the Council's Medical Adviser, the Panel had little discretion.

15. Current members and substitutes of the HARP have discussed the matter and asked us to agree that such appeals should no longer come within their terms of reference and that the right of appeal should end with one of the Assistant Directors of Housing.

16. We agree with the views of the HARP and the Overview and Scrutiny Committee hold the same view. Accordingly, we recommend as set out the commencement of this report.