

Report to Overview and Scrutiny Committee



Date of meeting: 4 September 2012

SCRUTINY

Report of: Constitution and Member Services
Standing Scrutiny Panel



Subject: Members Complaints Panel – Limits of Jurisdiction

Chairman: Councillor M Sartin

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Committee Secretary: Mark Jenkins (01992 564607)

Recommendations:

- (1) That revisions to the limits of jurisdiction of the Complaints Panel be approved; and**
- (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:

Background

1. The Member Complaints Panel (CP) is responsible for considering complaints at Step 4 in the Council's complaints procedure. Certain types of complaints already fall outside the 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);
- (i) 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;
- (j) when there is no evidence that the complainant has suffered any harm or injustice even if there has been administrative fault by the Council;
- (k) 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;
- (l) 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;
- (m) if the complaint has already been determined by the Local Government Ombudsman.

Further Exclusions

3. In light of some complaints that were considered during 2011-12 we recommend that the following additional exclusions be applied:

- (n) **Where a complainant's claim for financial compensation or reimbursement has already been considered but rejected by an independent body which has the legal authority to determine such claims.**

Reason: we feel that the decisions of independent bodies (the courts; Land, Benefits and Rent Tribunals; insurers) take precedence over decisions of the Council so cannot be overturned by officers or Members.

- (o) **Where the complainant disagrees with a decision made by the Council but has neither suggested nor provided any evidence that there was any administrative fault in the way that decision was made.**

Reason: our view is that both the Council's complaints procedure and that of the Local Government Ombudsman can only determine if there was any administrative fault in the **way** a decision was made. For example, a failure to consider relevant information; a failure to

consult; unreasonable delay etc. If no administrative fault is found, the Ombudsman is not able to consider the merits of the decision, however strongly the complainant disagrees with that. The Council's complaints scheme is modelled on that of the Ombudsman. We feel that this additional restriction would bring the Council's complaints scheme into greater accord with that of the Ombudsman.

(p) Where the only remedy requested by the complainant is financial in nature and the amount requested is less than £150.

Reason: The minimum cost of a Step 4 review meeting is around £200 (Chairman's special allowance; Members' mileage costs, printing of documents etc). This cost can significantly increase if the meeting extends past 7.00 pm as officers would then also be entitled to an attendance allowance. We therefore feel that it is not cost effective to convene a Step 4 review if the remedy requested by the complainant is for less than £200. However an amount of £150 is recommended in order not to fetter the Council's discretion in determining whether such cases should proceed to Step 4.

4. Members are asked to note that, if complainants feel they have been wrongfully denied a Step 4 review, he or she is entitled to make that complaint to the Local Government Ombudsman.

Conclusions

5. We are of the view that these exclusions will assist in ensuring that Complaints Panel hearings can concentrate on complaints which have not been settled through the complaints procedure at officer level and avoids the Panel's time being taken up with repetitive complaints which have been dealt with previously, are vexatious or are trivial in terms of the redress which is actually available.

Next Steps

6. If the Committee accepts these recommendations, the Council should be recommended to make the relevant alterations to the Constitution.