

Report to the Council

Committee: Overview and Scrutiny

Date: 24 April 2006

Portfolio Holder: Councillor Mrs D Collins

Item: 9

1. HOUSING APPEALS PANEL - TITLE, TERMS OF REFERENCE AND PROCEDURE

Recommending:

- (1) That the Panel be renamed 'Housing Appeals and Review Panel';
 - (2) That references in the Panel's terms of reference to 'appeal' and 'appellant' in homelessness cases be replaced with the words 'application', 'review' and 'applicant', as appropriate;
 - (3) That the written representations procedure be discontinued;
 - (4) That persons be advised strongly to appear before the Panel in order to ensure that all the relevant facts are made known;
 - (5) That the appropriate officers be required to attend all meetings to present their case, whether or not the person applying to the Panel is in attendance, so that the Panel is able to examine matters in detail by asking questions and seeking clarification of the issues;
 - (6) That the requirements regarding substitutes be amended to read: 'each political group represented on the Panel shall be required to nominate the equivalent number of substitutes to cover for any member of the Panel who is unavailable';
 - (7) That the requirement for meetings not being held in the absence of both the Chairman and Vice-Chairman of the Panel be removed and replaced with a requirement that in the absence of both, a Chairman be appointed from the members (not substitutes) present at the meeting; and
 - (8) That consequential changes be made to the Panel's Terms of Reference in the Constitution.
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Introduction

1. At our meeting on 16 March 2006, we considered proposals for changes to the terms of reference and procedure for the Housing Appeals Panel. The proposals had been endorsed by the Housing Appeals Panel and the Constitutional Affairs Scrutiny Panel.
2. The Housing Appeals Panel is responsible for hearing appeals against the decisions of the Head of Housing Services acting under delegated authority, on housing

matters. Appeals can be made by tenants, housing applicants, homeless applicants, owners of former Council properties or renovation grant applicants.

3. The Panel was established in 1991 and normally meets on a monthly basis considering one or two appeals at each meeting. Appellants either appear in person to present their case or opt for the matter to be determined by way of written representations.
4. Decisions of the Panel in relation to homelessness cases are subject to an appeal to the County Court. There is no appeal against other decisions of the Panel, although an application could be made for Judicial Review.
5. Counsel's advice in relation to a recent appeal against a decision of the Panel concerning a homelessness case has highlighted the need to distinguish between the different roles of the Panel.

Homelessness Cases

6. When considering homelessness cases, the Panel is conducting a review of an officer's decision under Section 202 of the Housing Act 1996, as amended. Counsel has advised that the use of the word 'appeal' in such cases, which has been the practice at this Council, is unfortunate. He has emphasised that the Section 202 review is part of an administration process and a case must be considered afresh with an open mind and on the basis of all the evidence. He has further advised that it is not the Panel's function to reach a narrow decision as to whether or not the officer's original decision was correct as a matter of law. Rather, the Panel must decide the broad question of whether or not the decision was correct starting from scratch.
7. Counsel and officers are confident that the Panel has been considering homelessness cases correctly but the frequent use of the words 'appeal' and 'appellant' in the agenda/reports, minutes and procedure could lead to confusion, if, and when, a matter is heard in the County Court.
8. According, it is proposed that the Panel be re-named 'Housing Appeals and Review Panel' and that references in its terms of reference to 'appeal' and 'appellant' in homelessness cases should be replaced with the words 'application', 'review' and 'applicant', as appropriate.

Other Matters Coming before the Panel

9. In relation to other matters, the Panel will continue to be considering an appeal against an officer's decision.

Procedure

10. The application form completion by persons wishing to have a matter considered by the Panel includes a section asking the person to indicate if they want to appear before the Panel or want the matter decided by written submissions only. The matter is then determined in accordance with the person's wishes.
11. In most other formal proceedings offering determination by written representations, the determining body or person decides whether this process is appropriate based on how straightforward the issues are, and after taking account of the views of both parties.

12. If a matter is to be determined by written representations, a decision should be taken only on the representations which have been made. The Panel's procedures have been reviewed and it has been concluded that the majority of cases which it considers are complex and are not suited to the written representations procedure. Currently, the case officer does not have an opportunity to seek a full hearing and it is considered that the written representations procedure is often not in the interests of persons applying to the Panel. Although, it might appear to a person to be a less stressful method of determination it is apparent that the best interests of the person are served if they are present in order to answer questions and clarify issues.
13. It is proposed, therefore, that the written representation procedures should be discontinued and that persons should be strongly encouraged to appear before the Panel. It is further proposed that the appropriate officers should be present at all meetings, whether or not the person applying to the Panel is in attendance, so that matters can be examined in detail by asking questions and seeking clarification of the issues.

Chairman and Vice-Chairman

14. The current terms of reference of the Panel require that either the Chairman or Vice-Chairman must be present for a meeting to take place. Recently consideration of an application had to be deferred because the Vice-Chairman of the Panel was not present and the Chairman on seeing the applicant determined that she had a prejudicial interest in the matter. It is also possible that both the Chairman and the Vice-Chairman will have prejudicial interests in a matter.
15. It is not considered that this requirement is necessary. All members and substitutes of the Panel receive training and it is felt that any experienced member of the Panel could chair a meeting. It is proposed, therefore, that in the absence of both the Chairman and Vice-Chairman of the Panel, a Chairman be appointed from the members (not substitutes) present at the meeting.