

Report to the Constitution and Member Services Standing Scrutiny Panel

Date of meeting: 26 March 2013

Subject: Housing Appeals and Review Panel – Terms of Reference – Order of Presentation of Cases



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Decisions Required:

- (1) To review the terms of reference of the Housing Appeals and Review Panel in relation to the order of presentation of cases at meetings; and**
 - (2) That, if necessary, appropriate changes be made to the terms of reference of the Housing Appeals and Review Panel and the Constitution.**
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1. At the request of the Housing Appeals and Review Panel (HARP), consideration was given in February last year by this Scrutiny Panel to altering the order of presentation of cases at Appeals and Review Panel meetings.

2. Members were advised at that time that a change in the order of presentation, with the Housing Officer presenting his/her case first, would have the following benefits:

(i) the HARP would have the benefit of receiving the full facts of the case at the outset as these would be set out in the officer's report, and this would enable members to understand better the submissions made subsequently by the applicant/appellant; and

(ii) the applicant/appellant would have time to settle in the meeting before being expected to address the Panel, and 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.

3. Members and substitutes of the Housing Appeals and Review Panel were consulted at that time in order to inform the Scrutiny Panel of their views. There was not a consensus of view although the majority view expressed was in support of the proposed change.

4. Members of HARP supporting the proposals accepted the benefits set out in paragraph 2 above. Members not in agreement with a change felt that at present in many cases when the officer puts his/her case the expression on the applicant's/appellant's face is recognition that their grounds for review/appeal are a lot weaker than they thought. Those Members felt that for applicants/appellants to be given this realization before they have even started their case would be even more intimidating than coming in to the meeting and having their say first. They also commented that sometimes an applicant/appellant says something which causes a Panel member to want to question the officer about it and this opportunity could be missed under the new proposals.

5. In the event, the Scrutiny Panel decided that the existing order of proceedings with the applicant/appellant presenting their case first should be retained but that provision should be made for the Chairman of the HARP to reverse the order if requested by the appellant/applicant or their representative. This decision was subsequently adopted by the Council and appropriate changes were made to the Constitution. The revised terms of reference of the HARP reflecting that decision are attached.

6. The Scrutiny Panel also decided to review the matter during this year in the light of the experience of members attending meetings of the HARP since their decision.

7. Since the Scrutiny Panel considered the matter last year, the HARP has considered seven cases. In four of those cases the applicant/appellant has presented their case first. Those applicants/appellants did not actively choose to go first but did not respond to the request to express their preference in relation to the order of presentation and went first in accordance with the default position. It is likely that some of those applicants/appellants did not express a view since they were unfamiliar with the process. In the other three cases the order of presentation was reversed at the request of the applicant/appellant.

8. In five of the seven cases the applicant/appellant was represented by one of their ward councillors. Those members were invited to express their views on the order of presentation but had not done so at the time of preparation of this report. Any views received since that time will be reported orally at the meeting.

9. Also, the views of members and substitutes of the HARP considering the cases have been sought on the order of presentation and they have all expressed a preference for the normal order of proceedings to be the Housing Officer presenting his/her case first.

10. The Director of Housing continues to be of the view that the case officer should present their case first for the reasons set out in paragraph 2 above.

11. If the Panel agrees that the normal order of presentation should be changed paragraphs (6) and (7) of its terms of reference will need to be amended as follows:

“(6) In relation to appeals or reviews at which the applicant's case is presented in person or by a representative, the hearing shall be conducted in the following order:

(a) Chairman's introductory remarks;

(b) Presentation of the Officer's case;

- (c) Questioning by the applicant (or representative);
- (d) Questioning by members of the Panel;
- (e) Presentation of the applicant's case;
- (f) Questioning by the Officer;
- (g) Questioning by members of the Panel;
- (h) Summing up by the applicant;
- (i) Summing up by the Officer;
- (j) Panel considers its findings in the absence of the applicant and the Officer;
- (k) The decision of the Panel will be conveyed to the applicant and Officer in writing.
- (l) The Panel shall have discretion to reverse the order in which the cases of the applicant and the Council are presented, provided that both parties agree.
- (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".