

EXECUTIVE COMMITTEE

15th November 2011

REFERRAL FROM CONSTITUTIONAL REVIEW WORKING PARTY - HOUSING APPEALS - PROPOSED AMENDMENT - REMOVAL OF NON-STATUTORY HEARINGS -

Relevant Portfolio Holder	Cllr Braley, Portfolio Holder for Corporate Management; and Cllr B Clayton, PFH Housing & Health
Portfolio Holder Consulted	Yes
Relevant Heads of Service	Liz Tompkin and Teresa Kristunas
Wards Affected	All Wards (housing cases only)
Ward Councillor Consulted	N/A
Non-Key Decision	

1. SUMMARY OF PROPOSALS

Currently, the Council's Policies for handling statutory Housing and statutory Employee Grievance appeals, include a non-statutory hearing before a panel of elected Members. The Housing Appeal Policy is currently at risk of being challenge by a Judicial Review to seek a declaration from the High Court that the Policy is invalid because this hearing is included. The proposal is to adopt amended Policies which remove this non-statutory step from the procedures would render them legally sound and prevent the considerable cost that would be involved in defending High Court proceedings.

2. RECOMMENDATIONS

The Executive Committee is asked to **RECOMMEND** that

- 1) the amended Housing Appeals Procedure attached at Appendix 1 to the report be approved and adopted with immediate effect; and**
- 2) the Employment (Disciplinary and Grievance) Appeal Processes be similarly reviewed, subject to any necessary further consultation and report.**

3. KEY ISSUES

Financial Implications

- 3.1 There are no cost implications in adopting the proposed Policies but there are considerable costs implications in not doing so as set out under 'Risk Implications' below.

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Legal Implications

- 3.2 The Housing Act 1996, as amended by the Homelessness Act 2002, govern the statutory procedures for decision making by local Housing Authorities in relation to Homelessness applications and Housing Allocation schemes.
- 3.3 The Employment Act 2002 governs the statutory processes in employment matters.
- 3.4 There is no legal basis for the inclusion of an additional “step” in the appeals process for either Housing or Employee Grievance appeal procedures, whereby the matter is referred to a panel of Members for consideration.
- 3.5 The Council has a current threat of Judicial Review of the Housing Allocations policy to be declared invalid, due to the inclusion of a Member Appeal hearing within the process.
- 3.6 The Employment Tribunal in a Judgment in January 2011 described the Council’s Employee Grievance appeal procedure as extremely slow and in the verbal comment the Tribunal Judge questioned the additional “Stage 3” which took the process outside the statutory period to appeal against a dismissal.
- 3.7 In addition, this non-statutory step is perceived as a “hurdle” for individuals and risking non-compliance by the Council with statutory timeframes and a resulting failure to meet them, thereby prejudicing their position.

Service / Operational Implications

- 3.8 Owing to the criticism of the Employee Grievance appeal process by the Employment Tribunal and the current legal challenge to declare the Council’s Homelessness and Allocations decision process invalid in law due, in both cases due to the inclusion of an additional non-statutory step in the process, this report seeks Member support for the removal of that step to make our processes statutorily compliant and safe from legal challenge.
- 3.9 This would result in a change in the Procedures for dealing with statutory appeal processes.

Customer / Equalities and Diversity Implications

- 3.10 This is a procedural change which will impact equally on all persons and groups within the Borough.

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4. RISK MANAGEMENT

- 4.1 The risks relating to this report lie in any decision not to implement the proposed changes to processes: the Legal Services Manager has had a pre-action notification of an intention to seek a declaration from the High Court by way of Judicial Review, that existing procedure for Housing Appeals does not comply with the statutory framework and is invalid.
- 4.2 The cost of defending a High Court case of this kind could be up to £12,000. Removal of the basis for claim would remove the risk of having to incur such expenditure and at the same time render the Procedure compliant with the statutory requirements and safe from challenge on that point.
- 4.3 There would be a continuing risk of damages being awarded against the Council if a Claimant were found to have been prejudiced by the Council's Procedures, whether under the Employee Grievance or Housing Appeals procedures.

5. APPENDICES

Appendix 1 - Proposed amended Housing Appeal Procedure

6. BACKGROUND PAPERS

Existing Housing and Employment Appeal procedures.
Pre-action letter to the Council of Judicial Review action (exempt).

AUTHOR OF REPORT

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**APPENDIX 1 – Proposed amended Housing Appeal Procedure
(draft 'internal'/Officer version)**

Right to Review / Appeals

~~Redditch Borough Council operates a two stage review procedure.~~
Customers can request a review of any decision made under the provisions of the Housing Act 1996 Part VII (as amended 2002). The request must be made within ~~28~~ **21** days from the date of the decision letter. The Housing Options Manager will be responsible for undertaking the review. It is important that the reviewing Officer has had no involvement in the original decision therefore should this be the case the Housing Services Manager will undertake the review. The Council has 56 days to review the decision and provide the customer with the outcome of this review.

~~The 2nd stage review is a hearing by elected members of the Council who will review the case where the customer is invited to attend together with representations from a 3rd party such as Citizens' Advice Bureau, support worker, social worker.~~

Process when a request for review letter has been received:

1. The Housing Options Assistant is to send an acknowledge letter to the customer advising them of the named person who will be undertaking the review and outlining details of the process including advising the Council has 56 days to review their case and notify them of the outcome.
2. The request for a review must be logged on the customer's homelessness application on Arbitas * detailing date of receipt and put on system to "Under Review" to the Housing Options Manager.
3. The case file is to be passed to the Housing Options Manager making sure all relevant documentation / case notes are up to date.
4. Whilst the review is being carried out the Housing Options Manager may request the Housing Options Officer to seek additional information to assist with the review.
5. When the review is completed the Housing Options Manager will confirm the outcome of the review in writing to the customer including information on how to ~~proceed with to a 2nd stage review and their rights to~~ request an appeal at County Court on a point of law. The Housing Options Manager will notify the Housing Options Officer of any necessary updates to the status of the customer's application on Arbitas *.

= *Computer software system.*

END.