

Report of the Director of Corporate Resources to the meeting of the Regulatory and Appeals Committee to be held on 5 March 2020

AI

Subject:

APPEALS PANELS APPOINTED BY THE REGULATORY AND APPEALS COMMITTEE

Summary statement:

This report seeks the approval of this Committee to implement a change to the process for appeals currently considered by the panels appointed by the Regulatory and Appeals Committee. In essence, it is recommended that 5 appeal panels be replaced by one panel.

Joanne Hyde
Strategic Director Corporate Resources

Portfolios:

Corporate

**Regeneration, Planning & Transport
Education, Employment & Skills**

Report Contact: Michael Bowness
Phone: (01274) 435928
Email: Michael.bowness@bradford.gov.uk

Overview & Scrutiny Areas:

**Corporate/ Regeneration and Environment
Children's Services**

1. SUMMARY

This report seeks the approval of this Committee to implement a change to the process for appeals currently considered by the panels appointed by the Regulatory and Appeals Committee.

2. BACKGROUND

- 2.1 At the meeting of the Regulatory and Appeals Committee held on 11 April 2019 two reports were considered which looked at the processes for the appeals undertaken by the Education Appeals Panel and the Housing and Non-Domestic Rates Appeals Panel. The reports recommended that the elected Member Appeals Panels making decisions on those appeals be replaced with officer decision making processes.
- 2.2 On both reports the Regulatory and Appeals Committee made the following decision (Minutes 97 and 98 refer):

Resolved –

That the feasibility of amalgamating the panels that discharge the functions of the Regulatory and Appeals Committee and determine appeals be considered.

- 2.3 There are 5 appeals panels appointed by the Regulatory and Appeals Committee and the remit of the appeals panels is set out in Article 8 of the Council's Constitution. These are:
- (i) The Housing and Non-Domestic Rates Appeals Panel – In Article 8.6.3 appeals processes are provided for in relation to:

“Housing and non-domestic rates appeals in relation to grants for renovation, improvement and repair (including appeals against refusals of disabled facilities grant in respect of Council and private housing), discretionary housing payments, the application of wheeled bin refuse collection arrangements, non-domestic rates relief, access to personal files.”

Panel membership 3 from 15 members, where possible including the Chair, and drawn on a rota basis. Quorum 2.

Appeals heard by this panel have mainly involved appeals against officer decisions relating to disabled facilities grants (DFGs) with 8 appeals having been considered by the Panel in the last 5 years, all of which involved DFGs. Recently the Panel heard an appeal against a decision about Discretionary Housing Payments (DHP), although this was the first one in five years.

The Government guidelines suggest a right of appeal against decisions in relation to DHP, but do not prescribe who should consider it. (There is no requirement in law for a Member appeal panel).

The Council removed its Discretionary Rates Relief Scheme in 2017, as part of that year's budget savings. Consequently, this only leaves appeals against decisions in relation to Hardship Relief. There has been one such appeal in the last five years. Legislation does not provide for an appeals process in relation to business rates relief, although good practice would dictate some form of review.

There has never been an appeal against a decision in relation to wheeled bins nor access to personal files to this Panel. Further, Officers are not aware of any policy, nor legislation, that provides for such an appeal in relation to wheeled bins. Access to personal files is now governed by the Data Protection Act 2018 and the Council Information Security Policies provide for dealing with such requests, including what to do on refusal.

- (ii) Hackney Carriage and Private Hire Panel - In Article 8.4.1.2 an appeals process is provided for in relation to:

"The licensing of Hackney Carriages and private hire vehicles, drivers and operators."

Panel membership 3 from 13 members, where possible including the Chair, and drawn on a rota basis. Quorum 2.

Appeals have been considered by this Panel when Officers were recommending the granting of a licence against policy. The Committee met twice in 2018/19.

On 7 February 2019 the Strategic Director presented a new policy to the Regulatory and Appeals Committee as part of the West Yorkshire harmonisation project (Minute 79 refers). The Committee approved the proposal and the policy has been implemented. This enables officers to make all licensing decisions with appeals being heard by the Magistrates Court. There is no requirement for officer decisions to be ratified by a Panel of Members.

- (iii) Education Appeals Panel - In Article 8.6.1 an appeals process is provided for in relation to:

"Education appeals in relation to education maintenance allowances. The Committee shall also make recommendations to Education Bradford in the case of reviews for free school transport and assistance with transport to and from schools and colleges."

Panel membership 3 from 14 members, where possible including the Chair, and drawn on a rota basis. Quorum 2.

The current Department for Education (DfE) Guidance on Home to School Travel and Transport provides that local authorities should have in place appeals procedures for parents to follow should they wish to appeal about the eligibility of their child for school travel support. It also recommends that local authorities should adopt the appeal process set out in Annex 2 of the Guidance.

The Council's review and appeal process reflects this Guidance. The Guidance sets out a two-stage process. Stage one is a review by a senior officer. Stage 2 is a review by an independent appeal panel. It provides that independent appeal panel members should be independent of the original decision-making process (but are not required to be independent of the local authority and it is not prescriptive about whether this panel should be members or officers). They are required to be suitably experienced (at the discretion of the local authority).

(The latest draft DfE statutory guidance dated July 2019 (not yet formally issued) includes a suggested appeals process.)

The Education Appeals Panel considered 61 reviews during the 2018/19 municipal year. Education Maintenance allowances were abolished in 2011 so this element of the Panel's remit is no longer needed.

- (iv) Miscellaneous Licences Panel - In Article 8.4.1.1 an appeals process is provided for in relation to:

"The registration and licensing matters undertaken by the City Solicitor and Assistant Director, Waste, Fleet and Transport Services (excluding those that are the responsibility of the Licensing Committee under Article 10)."

Panel membership of 7 members. Quorum 4.

This Panel has not met since 2013 but had dealt with matters such as the registration of land as a town or village green and consent areas for the purposes of street trading.

- (v) Social Services Appeals Panel - In Article 8.6.2 an appeals process is provided for in relation to:

"Social Services appeals in relation to access to personal files, the National Health Service and Community Care Act 1990, matters under disabled persons legislation, appeals against refusal of a subject access request, and appeals in relation to the application of the contributions policy/ refusal of a needs assessment under the Care Act 2014."

Panel membership 3 from 12 members, where possible including the Chair, and drawn on a rota basis. Quorum 2.

This Panel has also not met since 2013 and last considered an appeal concerning contributions towards care. Subject Access Requests are now governed by the Data Protection Act 2018. The Council's Information Security Policies make provision for dealing with such requests, including the steps to be taken on a refusal.

- 2.4 In looking at the workloads of the appeals panels what is clear is that with the exception of the Education Appeals Panel the number of appeals considered by each panel has diminished or there are no appeals for the panels to consider (in some instances due to an appeals process no longer being required). In these circumstances it would seem appropriate for a single appeals panel to cover the remaining appeal processes.

3. CONSIDERATIONS

- 3.1 If a single appeals panel is to be constituted, consideration has to be given to the number of Members on the panel. Although currently seven Members are required for the Miscellaneous Licences Panel, for the other appeal panels the current practice is three Members and it is recommended that there should be three Members on the single appeals panel. To ensure the availability of Members to attend the appeal hearings it would be advisable to have at least twelve Members able to serve on the panel.
- 3.2 Due to the likely amount of business to be dealt with by a single appeals panel the role of Chair and Deputy Chair should be allocated a Special Responsibility Allowance (SRA). Any proposal for an SRA will need to be considered by the Independent Remuneration Panel.
- 3.3 Legal and Democratic Services, Service Departments and Member Development will need to dedicate resources to ensure that the Members on the new panel are trained to undertake the appeal processes, albeit that there are likely to be some Members with existing knowledge.
- 3.4 Consequential amendments to the Council's Constitution will be needed if the Housing and Non-Domestic Rates Appeal Panel, Miscellaneous Licences Panel, Hackney Carriage and Private Hire Panel, Education Appeals Panel and Social Services Appeals Panel are to be replaced by a single appeals panel by making the appropriate amendments and deletions to Article 8 of the Constitution.

4. FINANCIAL & RESOURCE APPRAISAL

- 4.1 The Special Responsibility Allowances (SRAs) for the Chairs of the Housing and Non-Domestic Rates Appeal Panel, Hackney Carriage and Private Hire Panel, Education Appeals Panel and Social Services Appeals Panel amount to £27,791. There will be a saving of £14,822 in SRAs if the Chair of the new panel receives an SRA of £7,411 (20% of the Leader's SRA) of £37,056 and the Deputy Chair an SRA of £5,558 (15% of the Leader's SRA).
- 4.2 It is not anticipated with a single appeals panel there will be any savings in the administration of the appeals by officers. There is a continued likelihood that appellants will wish to use any appeals processes in place.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

There are no significant risks arising out of the implementation of this recommendation.

6. LEGAL APPRAISAL

- 6.1 This Council is required to undertake certain appeals processes as required by statute.
- 6.2 Local authorities must publish general arrangements and policies in respect of home to school travel and transport for children of compulsory school age. It should also set out clearly how parents can hold local authorities to account through their appeals processes and publish this on their website.
- 6.3 Local authorities should have in place both complaints and appeals procedures for parents to follow should they have cause for complaint about the travel service, or wish to appeal about the eligibility of their child for travel support. The procedure should be published alongside the local authority travel policy statement.
- 6.4 DfE Guidance previously left it to local authorities to determine how their appeals procedures should operate in practice. In 2014 it introduced a recommended review/appeals process in the interests of consistency and in order to be both clearer and more transparent for parents and local authorities. It revised its guidance again in 2018 and produced a draft policy for local authorities (not yet issued formally) which now advocates a senior officer appeal panel.

7. OTHER IMPLICATIONS

7.1 EQUALITY & DIVERSITY

No equality impacts identified

7.2 SUSTAINABILITY IMPLICATIONS

None

7.3 GREENHOUSE GAS EMISSIONS IMPACTS

None.

7.4 COMMUNITY SAFETY IMPLICATIONS

None.

7.5 HUMAN RIGHTS ACT

None.

7.6 TRADE UNION

No Trade Union implications.

7.7.1 WARD IMPLICATIONS

None

**7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS
(for reports to Area Committees only)**

None

7.9 IMPLICATIONS FOR CORPORATE PARENTING

None

7.10 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT

None

8. NOT FOR PUBLICATION DOCUMENTS

None

9. OPTIONS

9.1 Continue with the current appeals panel structure appointed by the Regulatory and Appeals Committee but update the panels' terms of reference.

9.2 Implement a single appeals panel to undertake the remaining appeals processes required.

10. RECOMMENDATIONS

- 10.1 That the option to replace the Housing and Non-Domestic Rates Appeal Panel, Miscellaneous Licences Panel, Hackney Carriage and Private Hire Panel, Education Appeals Panel and Social Services Appeals Panel with a single appeals panel to be called the Bradford District Appeals Panel for the remaining appeals processes be approved subject to Council approval.
- 10.2 That the City Solicitor be requested to place this report (if approved) before the Independent Remuneration Panel with a view to a recommendation regarding the Chair's and Deputy Chair's SRA.
- 10.3 That the City Solicitor be asked to draft amendments to the Constitution, particularly Article 8, to implement this decision and the proposed amendments be recommended to the Governance and Audit Committee to then be forwarded to Council for approval.

11. APPENDICES

None

12. BACKGROUND DOCUMENTS

Reports to the Regulatory and Appeals Committee on 7 February and 11 April 2019.