

REPORT TO: COMMUNITIES COMMITTEE ON 16 FEBRUARY 2010

SUBJECT: HOMELESSNESS REVIEWS AND APPEALS

BY: DIRECTOR OF COMMUNITY SERVICES

1. REASON FOR REPORT

- 1.1 This report reviews the Council's current policy in relation to homelessness reviews and appeals.
- 1.2 This report is submitted to the Committee in terms of Section A (64) & (65) of the Council's Scheme of Administration relating to homelessness.

2. RECOMMENDATION

- 2.1 It is recommended that the Communities Committee: -**
- (i) approves the suggested amendment to the Homelessness Policy outlined in paragraph 8.1 and 8.2;**
 - (i) agrees the introduction of a target timescale for completion of reviews of 28 days; and**
 - (ii) agrees that monitoring of the achievement of the target be incorporated into performance reports to Committee from 1 April 2010.**

3. BACKGROUND

- 3.1 The Scottish Housing Regulator's report, published in January 2009, identified that the Council has an excellent approach to making homelessness decisions but also identified some areas for improvement. Overall, the Council obtained a Grade C for its homeless service which is regarded by the Regulator as 'fair'.
- 3.2 Among the areas identified for improvement, the Regulator deemed that whilst the review and appeals process was dealt with appropriately, the Council takes too long to complete the process and not all people who request a review can access help from advocacy services.

- 3.3 The report noted that the Council has a duty to advise homeless applicants of their statutory right to request a review of its homelessness decisions and that it notifies people of their right to request a review within 21 days in its decision letters.
- 3.4 Officers have now examined the review and appeals process for the homeless service and have also investigated how other local authorities are dealing with this issue.

4. LEGAL REQUIREMENTS

- 4.1 In accordance with Section 35A of the Housing (Scotland) Act 1987 (as amended), local authorities have a duty to review homelessness decisions, if requested. These decisions may be on the homelessness application itself or on any other aspect of the homeless provision delivered by the local authority.
- 4.2 The Council must notify a homeless applicant of their right to request a review and make clear that the applicant can challenge any decision relating to their homelessness. The applicant must also be informed of the time within which a request should be made and of any advice and assistance that is available to the applicant in connection with their review.
- 4.3 A request for a review should be made within 21 days of the applicant being notified of the Council's decision, or a longer period if permitted by the Council.
- 4.4 The procedure for the review is set out in the homeless legislation and the Code of Guidance on homelessness. This specifies that the person who carries out the review should be senior to the person who made the decision and should also have had no involvement in the making of the original decision.
- 4.5 The Council has a duty to notify the applicant as to the outcome of their review and where the original decision is upheld, further clarify the reasons for this. It must also ensure that the implications of the review decision are fully explained to the applicant and must also inform them of their legal rights thereafter. The legislation does not however provide a timescale for the completion of the review.
- 4.6 Notice of the review decision must be given in writing and shall, if not received by the applicant, be treated as having been given only if it is made available at the authority's office for a reasonable period for collection by the applicant or on behalf of the applicant.
- 4.7 Under section 29 of the Housing (Scotland) Act 1987 (as amended), temporary accommodation should continue to be provided to the applicant while the review is being considered.
- 4.9 There is no legal right to a further review or an appeal of a decision reached on review.

5. CURRENT HOMELESSNESS REVIEWS AND APPEALS PROCESS

- 5.1 The homelessness reviews and appeals process is detailed in the Homelessness Policy. This policy was approved by the Community Services Committee on 10 August 2005 (paragraph 26 of the Minute refers).
- 5.2 The Homelessness Policy provides applicants with a three staged process of:

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| Stage 1 | a review of the homelessness decision |
| Stage 2 | an appeal against the review outcome of the homelessness decision |
| Stage 3 | a judicial review |

Further information regarding each of these processes is detailed below.

Review

- 5.3 The Homelessness Policy states that an applicant can request a review of a decision relating to homelessness within 21 days of the date of the decision.
- 5.4 Between 1 January 2009 and 31 December 2009, the Housing Service received 21 requests for review. The average timescale to conclude a review is 63 days.

Appeal

- 5.5 The current appeals process provides a further mechanism to enable applicants to challenge the outcome of a homeless review. The Housing Appeals Sub Committee is responsible for considering the appeal and the group consists of Elected Members, Legal Services and the Chief Housing Officer. The applicant is invited to attend the appeal hearing and can also present evidence in support of their application.
- 5.6 In the period 1 January 2009 to 31 December 2009, there were no cases referred to the Housing Sub Committee for appeal. There were however 8 applicants who requested an appeal but following receipt of further evidence from the applicant, these cases were resolved.

Judicial review

- 5.7 Applicants have the legal right in terms of the homeless legislation to seek a judicial review should they remained dissatisfied with the outcome of their homeless application. The right to judicial review also does not diminish the right of the applicant to approach the Ombudsman or the Care Commission.

6. REVIEW OF PRACTICE IN OTHER LOCAL AUTHORITIES

- 6.1 Research has been carried out on the review and appeals processes in other local authorities. Of the 32 requests made to local authorities, 10 responded. Of these only one other local authority

(North Ayrshire) has an appeals process similar to Moray. Of the neighbouring local authorities including Aberdeen City, Aberdeenshire Council, Highland and Angus Councils, none provide an additional appeal mechanism after the outcome of the review.

- 6.2 Many authorities however have a strict monitoring framework in place to ensure that their local timescales and targets for reviews are adhered to.

7. SERVICE IMPROVEMENTS

- 7.1 The Council has recently introduced a matrix of need as agreed by Communities Committee on 11 August 2009 (paragraph 11 of the minute refers). The matrix was to enable the Council to have a more flexible approach towards the abolition of priority need by 2012. The aim of the matrix was to improve the consistency of the decision making process and also to assist Officers improve their assessment and understanding of vulnerability.
- 7.2 This is a significant step forward for the Council in terms of the review and appeals process as currently the majority of applicants who have previously requested a review have done so on the basis of vulnerability.
- 7.3 The iWorld system has also been developed to allow the Council to record requests for a review on the system. This will assist Officers to track and process reviews within the appropriate timescales and also report this area of activity back to Committee.
- 7.4 The Council is about to appoint an Operations Manager to the Housing Needs Team. This post will have direct responsibility for ensuring that the reviews are dealt with in line with Council Policy.

8. PROPOSED AMENDMENT TO THE REVIEW/APPEAL PROCESS

- 8.1 It is proposed that the Council removes the appeals process from the Homeless Policy for the following reasons:
- It has been identified that the current review and appeals process is lengthy and comes at a significant cost in terms of the ongoing requirement to provide temporary accommodation.
 - The main reason for seeking a review has been on the grounds of vulnerability. It is anticipated with the introduction of the matrix that the number of cases where a review will be sought may reduce.
 - A change in the process would bring the Council in line with other neighbouring local authorities and allow staff resources to be used more effectively within the service.

- 8.2 Applicants will now have the right to request a review in accordance with Section 35A of the Housing (Scotland) Act 1987. If the applicant is not satisfied with the Council's decision thereafter, they may seek a judicial review.

9. PERFORMANCE MONITORING

- 9.1 It is recognised that the current performance on the completion of homeless reviews require improvement. It is therefore proposed that the Committee agree a target of 28 days for completion of a review from the date of receipt. It is suggested that monitoring of the extent to which the target is achieved could be incorporated into the performance reports presented quarterly to Committee, with effect from 1 April 2010.
- 9.2 Reduction in the time taken to complete reviews will have a positive impact on the costs of temporary accommodation.

10. SUMMARY OF IMPLICATIONS

(a) Single Outcome Agreement/Service Improvement Plan

Tackling homelessness is a key action identified in the Single Outcome Agreement under Outcome 10. It is also identified as a priority in the Service Improvement Plan.

(b) Policy and Legal

There are no direct implications arising from this report.

(c) Resources (Financial, Risks, Staffing and Property)

There are no direct financial implications arising from this report. It is anticipated that effective management of the review process will have a positive impact on the costs borne by the Council in the provision of temporary accommodation. It is not considered that any additional staffing resources would be required.

(d) Consultations

Consultations have taken place with the Director of Community Services, the Chief Housing Officer, senior managers in the Housing Service, and Deborah Bosworth, Principal Accountant were consulted on this report and agree with the recommendations.

10. CONCLUSION

10.1 This report proposes an amendment to the Homelessness Policy by removing the right of appeal following the outcome of a homelessness review.

Author of Report: Gillian Henly, Homelessness Projects Officer
Background Papers: Held on file by the author
Ref: GH/HPO/Reviewprocess