

The Highland Council

Community Services
15 May 2014

Agenda Item	11
Report No	COM/10/14

Homelessness Appeals

Report by the Director of Community Services

Summary

To advise Committee of the current process for dealing with appeals against decisions on homelessness cases, and seek agreement on future arrangements for Member involvement in final stage appeals.

1. Background

- 1.1 The Council has a number of legal duties in relation to homelessness. These are reflected in our Homelessness Policy, which is also informed by a national code of guidance on homelessness. The current Council Homelessness Policy was approved in March 2011 and is available using the link below:

<http://www.highland.gov.uk/NR/rdonlyres/F5CC10A7-8C4C-4047-B3D6-8D5A974F6FBD/0/homelessnesspolicy.pdf>

- 1.2 Local Authorities have a legal duty to review decisions if requested, and the timescale and procedure to be followed is set out in legislation. Councils must notify applicants that they have a right to seek a review of the decision made on their homelessness application. The Council's current homelessness policy contains details of our appeals process. The Review Process itself is attached as **Appendix 1**. This has been updated to reflect the Council's new Service and Committee structure.

2. Review and Appeal Arrangements – homeless decisions

- 2.1 Any homelessness applicant who is unhappy with the decision made in relation to their case has a right to have their case reviewed. Applicants are advised of their right to have their case reviewed when they are notified of the assessment decision on their application. All applicants are advised of where they can get independent advice should they wish to discuss the decision made in relation to their homelessness application and for help should they wish to have their case reviewed.
- 2.2 The Appeals process contains clear timescales for dealing with cases, which aim to ensure that appeals are dealt with as quickly as possible, whilst

providing a reasonable opportunity for applicants to receive independent advice. There are 2 stages to the process.

2.3 Stage 1 involves a full case review by the Housing Policy Officer with responsibility for homelessness. The Housing Policy Officer will consult with appropriate staff from Legal and Care and Learning Services in reviewing the case.

2.4 Applicants will be notified of the decision reached within 7 calendar days of making a request for a review. Notification will include the reasons for the decision, and confirmation of the right to request a 2nd stage review.

2.5 Stage 2 involves an appeal Panel consisting of:

- A Member of the Council's Community Services (who will normally act as Chair);
- Director of Community Services, Head of Housing or Area Community Services Manager;
- Council Solicitor.

2.6 A 2nd stage review panel will be called within 7 calendar days of a request for review. Where possible the Panel will meet in a location suitable for the applicant.

2.7 The role of the Panel is to decide whether the decision made in the case was reasonable under the terms of the legislation and Code of Guidance on Homelessness. This involves considering whether the decision was reasonable with respect to:

- Legal tests for homelessness
- Evidence considered in arriving at the decision
- Related Council policies and joint protocols – eg Protocol on Children's Act Assessments or Looked after Children.

2.8 In notifying applicants of the outcome of a 2nd stage review applicants will be advised of their right to seek judicial review of the Council's decision on their case.

2.9 Case numbers are set out in the following table:

Year	Stage 1	Stage 2
2012 – 2013	16	3
2013 – 2014	23	5

3. Future Appeals

3.1 The current process for undertaking reviews is considered to work well and no fundamental changes are recommended. The process attached as **Appendix**

1 has been updated to reflect current service and committee arrangements.

3.2 As at present it is recommended that any Member of the Committee who has undertaken training in homelessness appeals will be able to chair an Appeal hearing.

3.3 In order to meet the timescales required in the appeals process the Housing Policy Officer will normally e-mail all Members who have received training and establish availability. The first Member who replies to confirm availability would be asked to chair the hearing. If no Member is available the hearing would proceed chaired by the Director or Head of Service.

3.4 A Training session has been arranged following Committee on 15 May to which all Members of the Committee are invited. A further session will be arranged if required.

4. Implications

4.1 There are no known resources, climate change/carbon clever, equalities, Gaelic or risk implications arising from this report.

4.2 The process outlined in this report will ensure that the Council complies with legal and regulatory duties in relation to Homelessness.

Recommendations

Committee is invited to:

- (i) Agree to continue with the current appeals process, with final stage appeals chaired by a Member of the Community Services Committee.
- (ii) Agree that any member of the Committee who has undertaken training in homelessness appeals will be able to chair an Appeal hearing, and
- (iii) Note that a training session has been arranged following the Community Services Committee meeting on 15 May, to which all Members of the Committee are invited.
- (iv) Note that a further session will be arranged if required.

Designation: Director of Community Services

Date: 6 May 2014

Author: David Goldie, Head of Housing

Background Papers:

Appendix 1

Highland Council

Homelessness – Review Process

1. Homeless Review process - legislation and guidance

- 1.1 Local Authorities' duties in relation to homelessness are set out in legislation and are also subject to the Code of Guidance on Homelessness published by the Scottish Government.
- 1.2 When its inquiries into a homeless application are complete, the local authority is required by section 30 of the Housing (Scotland) Act 1987 to notify the applicant of its decision in relation to the homelessness application.
- 1.3 As part of this notification the local authority must also give the Applicant reasons for its decision. Normally, a decision should be sent in writing to the Applicant within 28 days of the application.
- 1.4 Under the terms of the Housing (Scotland) Act 2001 local authorities must have a review process in place. A person senior to the person who made the initial decision must carry out reviews, and the reviewer must not have been involved in the initial decision. After the review the Applicant must be notified in writing, and where the decision goes against the Applicant he/she must be given the reasons for this in writing. The Applicant has the right to request a review of his homeless decision and this request should be made within 21 calendar days of the date on which they were notified of the decision – if they apply after that time it is at the discretion of the Local Authority whether or not the request for review is accepted, but there will be no right to review after this time.
- 1.5 The Code of Guidance states that the review procedure should be as speedy as is consistent with a full and fair hearing. The Applicant should be fully informed of the points to be considered, should have the right to be accompanied by a friend, advisor or legal representative and should have the right to make verbal as well as written representations.

2. The Highland Council Review and Appeal Process

- 2.1 The Council's review process aims to establish whether the original decision was reasonable with respect to:
 - Legal tests for homelessness
 - Evidence considered in arriving at the decision
 - Related Council policies and joint protocols – eg Protocol on Children's Act Assessments or Looked after Children.
- 2.2 On receipt of a request for a review of a homeless decision the following process should be followed:

Staff should check letters carefully to ensure that whenever an Applicant requests a review the appropriate procedure is followed. Staff should also be aware that in some cases an Applicant may wish to clarify aspects of the case with the Area team or may wish to supply additional information for consideration. This does not require a review, and staff should simply make sure that an Applicant's enquiries about decisions are dealt with in a helpful and considerate manner, and that the review process is always used when appropriate.

- 2.3 When a review letter is received the Housing Policy Officer (HPO) will decide whether there are grounds for a review.

The HPO will reply to the letter. This reply will either:

- a) Refuse the appeal on the basis that no proper grounds for appeal have been put forward:

Example 1

If it is accepted that the Applicant is homeless, but they have been found to be intentionally homeless and if the appeal does not dispute any aspect of the decision but asks for it to be changed because the Applicant is homeless, then no grounds for appeal have been made.

Example 2

If the Applicant is simply unhappy with the decision but gives no grounds for disagreeing with it, then no grounds for appeal have been made.

The HPO will however need to consider whether the Applicant has any problems with literacy or has any other support needs etc. which might mean that he/she is unable to communicate their grounds for appeal in writing, to ensure that vulnerable people are not unfairly disadvantaged **or**

- b) Advise the Applicant that the decision will be reviewed and the outcome of this review will be sent to them in writing.

- 2.4 If the request for a review is accepted the Area Community Services Manager (ACSM) or their nominated depute will in the first instance check to see if the initial decision was correct and whether all appropriate enquiries were carried out. This check must be thorough and must be carried out **within 2 working days** of request for review letter being received.

- 2.5 If new information has been made available that will change the homeless decision the ACSM should write to the applicant advising them of the new decision and advise the HPO that the homeless decision has been changed.

- 2.6 If no new information is received, or if the information received does not change the original decision, details of the case should be sent to the HPO using a standard pro-forma **within 4 working days of the request for review being received.**

- 2.7 The HPO should review the case and respond to the applicant within 7 calendar days **of receipt of the request for a review.**
- 2.8 Where an accessible housing assessment is a critical element of the case decision, and if the grading is being disputed, the HPO will normally request an urgent review of the grading from the Medical Adviser.
- 2.9 Where the Applicant's household includes a child or young person who may be regarded as a child in need under the terms of the Children (Scotland) Act 1995 then an assessment of their needs may be required and should be requested from Care and Learning, as outlined in Homelessness Procedures.

3. **Stage 1**

- 3.1 The HPO will check all case papers and in reviewing the decision may seek legal, social work, police or medical advice where necessary. If additional information or a Children's Act assessment is required this timescale may be extended. If this is the case the HPO will write and notify the applicant.
- 3.2 The HPO will advise the ACSM of the outcome of the review and will write to the applicant within **7 calendar days** of receipt of the request of a review.

4. **Stage 2**

- 4.1 If an Applicant feels that all his/her circumstances haven't been fully considered in the 1st stage review they will be able to request a 2nd stage review.

A Stage 2 review will be heard by a Homelessness Appeals Panel, consisting of:

- A Member of the Council's Community Services Committee (who will normally act as Chair);
 - Director of Community Services, or Head of Housing, or an Area Community Services Manager;
 - Council Solicitor.
- 4.2 The HPO will arrange for the panel to meet and will contact the applicant to advise them of the date of the review. If a Member of the Council's Community Services Committee is not available on the date of the hearing the 2nd stage review will go ahead as planned and the Director of Community Services or the Head of Housing will chair the meeting.
- 4.3 It is important that Applicants have confidence that they will receive a fair hearing from an Appeal Panel. Appeal Panel Members should be reminded that they must act impartially. Hearings should usually be conducted in as informal an atmosphere as possible.
- 4.4 It is important that all of the Appeal Panel's communications, conclusions and recommendations are fully and clearly expressed and capable of being understood by Applicants. Communication may involve any support necessary and/or assistance including interpretation and translation.

4.5 An Appeal Hearing must afford the Applicants an opportunity of appearing and making oral representations. If the Applicant is being represented it is expected that the Applicant will also attend the Hearing. The venue for appeals should take account of the Applicant's place of residence and their ability to travel. This will normally require the hearing to take place within a reasonable travel distance of the Applicant. The notification to be given to the Applicants and any witnesses must include a statement as to their rights:

- (i) To appear or to be represented at the Hearing. If the Applicant is being represented the Applicant is also expected to attend.
- (ii) To be accompanied at the Hearing by one person not including the person (if any) representing them.
- (iii) They may if they wish lodge written representations.

4.6 If the Applicant wishes to submit a written statement this will be accepted but must be sent to the HPO no less than 24 hours prior to the date and time of the Hearing. The HPO will circulate this to the Panel.

4.7 Where an Appeal Panel proceeds by way of written submissions only, the Appeal Panel may seek further information from the parties or their representatives prior to issuing their decision.

4.8 A Hearing will normally take place within 7 calendar days of receipt of the request for a 2nd stage review. In the event of the Panel being unable to meet within that period due to circumstances outwith its control, the Hearing will be held as soon as possible after that.

4.9 The Hearing may be postponed if either the date or the location is unsuitable to either party.

5. Procedure at Hearing

5.1 Hearings must be held in private.

5.2 The chairperson will have discretion regarding the conduct of the meeting and all participants must respect the role of the chairperson.

5.3 The following procedure should be adhered to unless, for good reason, the Appeal Panel determine otherwise.

- The Chairperson will explain the format of the meeting
- Senior member of staff from the Area Team involved in making the homelessness decision explains the evidence considered and the reasons for decision made.
- The Applicant and Panel members can ask questions
- The Applicant or their representative can outline why they think the decision is not correct
- Panel Members can ask questions
- The Panel will retire to consider their decision

5.4 Members of the Panel may ask questions at appropriate points as determined by the

Chairman.

- 5.5 All parties attending the Hearing should normally be present throughout the proceedings subject to the discretion of the Chairman where cause has been shown.
- 5.6 The Council Solicitor may be called upon to give advice on procedures during the course of the Hearing and when the Panel retires to consider their decision and recommendations. At the instigation of the Panel, adjournments may be called for any reason including the provision of advice from other sources. The Panel will be entitled to obtain additional information or evidence from relevant parties.
- 5.7 If it is necessary to reconvene the Hearing, before adjourning, the Chairperson of the Panel must give notice of the date, time and venue for the resumption of the Hearing and may if appropriate arrange with the HPO for this to be confirmed in writing.

6. Decisions of the Appeal Panel

- 6.1 If the Applicant(s) are not present or represented or if the Panel does not announce their decision at the end of the Hearing the HPO will arrange for written confirmation of conclusions and recommendations to be sent to the Applicant.
- 6.2 If the Panel reaches a decision on the day of the Hearing the Applicant will be advised verbally. The HPO will arrange for written confirmation to be sent to the Applicant.

7. Further Review

- 7.1 The two stage review process provides a thorough and fair system to review homelessness decisions. There is no further appeal system within the Highland Council. If an Applicant is dissatisfied with the outcome of an appeal, they are advised that they can apply for judicial review. The Council does not assist the Applicant in this process and the Applicant will normally need to seek independent advice, e.g. from a lawyer, CAB or Shelter if they wish to seek a judicial review.