

The Highland Council
Community Services Committee
20 August 2015

Agenda Item	13
Report No	COM 41/15

Homelessness Appeals

Report by the Director of Community Services

Summary

This report recommends changes to the current appeals process in relation to homelessness decisions, aimed at streamlining the process and making it more consistent with the Council's Complaints Process.

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 Council's current Homelessness Policy was approved in March 2011 and is available using the link below:

http://www.highland.gov.uk/downloads/file/3062/homelessness_policy

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.

1.3 The current homeless review process was approved by Committee on 15 May 2014. It is a 2 stage process, with the second stage involving a Member of the Community Services Committee acting as the chair of an appeal hearing.

1.4 This report provides information on appeals that have been undertaken in the last year and recommendations for further changes to the process.

2 Review and Appeal Arrangements – homeless decisions

2.1 All homeless applicants receive a formal notification letter following assessment, and that letter details the Council's assessment of their case against the legal tests set out in homelessness legislation. All applicants have a right to seek a review of the Council's assessment of their case. Applicants are advised of their right to have their case reviewed when they are notified of the assessment decision. 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 current process for reviewing decisions aims 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 currently 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 services and Care and Learning in reviewing the case.
- 2.4 Applicants should submit stage 1 requests within 28 days of receiving a decision letter. The target is for applicants to be notified of the outcome of this review within 7 calendar days of making a request. Notification will detail the reasons for the decision, and confirmation of the right to request a 2nd stage review.
- 2.5 Applicants should submit a request for a stage 2 review within 28 days of receiving a stage 1 decisions. Stage 2 currently involves an appeal hearing 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.

The policy states that where a Member of the Committee is not available the review hearing will take place, chaired by the Director or Head of Service.

- 2.6 We aim to call a stage 2 review panel within 7 calendar days of a request for review. Applicants are able to attend and be represented at the meeting in order to state their case. 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 At each stage of the process applicants are advised of their right to seek judicial review of the Council's decision on their case.

- 2.9 Case numbers for completed appeals in the last year are set out in the following table:

Year	Stage 1	Upheld	Stage 2	Upheld
May 2014 – May 2015	24	7	7	1

3 Future Reviews

- 3.1 The experience over the last year has been that we have often been unable to meet

target timescales for dealing with cases. This is mainly because of time taken in verifying and reviewing information on case assessments for stage 1 reviews. It is also worth noting that over half of second stage reviews have been undertaken without Member involvement. It is also a feature of the current system that appeals are routinely accepted out-with the timescales set out in the policy. We have also found that there has been confusion between homeless reviews and the separate process through which applicants can ask for a review about whether an offer of housing received was reasonable. Applicants are entitled in terms of the Homelessness Policy to one reasonable offer of housing subsequent to a positive determination of entitlement to Housing. These cases are currently dealt with under the Council's complaints process.

3.2 In order to streamline the process and to introduce a single process for both homelessness decisions and the review of offers of accommodation made it is recommended that in future reviews of homeless decisions and offers of accommodation to homeless households should be in line with the Council's complaints process; albeit the process will still involve a review in terms of the legislation. That would involve:

- **Stage 1 reviews:** This would be a case review to assess how the statutory tests of homelessness have been applied. This would be carried out by an Area Community Services Managers, drawing on advice from housing policy or legal services staff as required.
- **Stage 2 reviews:** This would involve a "hearing" chaired by the Director of Community Services; or Head of Housing; or Area Community Services Manager with no previous involvement in the case. A Council Solicitor would also be involved in the panel. In cases involving households with children a senior manager from Children's Services with no previous involvement in the case would also be invited to be part of the panel. Applicants would have the right to appear in person and be represented.

3.3 A detailed revised process and target timescales is attached as **Appendix 1**.

3.4 If these recommendation are approved an annual report will be presented to the Committee on homelessness reviews.

Recommendations

Committee is asked to approve changes to the current homelessness appeals process that would involve:

- (i) A two stage review process consistent with the Council's general complaints process
- (ii) Increasing the scope of the review process to consider whether offers of housing made to homeless households are reasonable
- (iii) Appeals being heard by officers, including a Children's Services Managers in cases where households include children.

Designation: Director of Community Services

Date: 14 July 2015

Author/Ref: David Goldie, Head of Housing

The 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 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 and advise applicants of their right to seek a review. 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 a homeless decision and this request should be made within 21 calendar days of the date on which they were notified of the decision. It is at the discretion of the Local Authority whether or not the request for review is accepted outwith this timescale, 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 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.

- Whether an offer of housing under the homelessness policy was a “reasonable” offer in terms of Council policy.
- 2.2 All homelessness decision letters will specify the right of review and provide details of where applicants can receive independent advice. Requests for review should be submitted within 21 days of the homelessness assessment notification letter.
- 2.3 On receipt of a request for a review of a homeless decision staff should check case files 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. If additional information is provided that would alter the decision on the case this can be dealt with locally. Where this happens the applicant should be issued with a fresh homelessness decision letter. These cases do 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.

3 Stage 1 Process

- 3.1 A letter requesting a review should be sent to the Housing Policy Officer at Council HQ for initial assessment and recording. The Housing Policy Officer will acknowledge receipt of the request.
- 3.2 The Housing Policy Officer will send the request to the Area Community Services Manager or designated Assistant Manager for review. The outcome of the review should be notified to the applicant in a specified format, addressing each point raised in the applicants letter. This review should be undertaken within 14 days. A copy of the response should be sent to the Housing Policy Officer for recording purposes.
- 3.3 During the review process temporary accommodation will continue to be provided.
- 3.4 In carrying out their review the Area Community Services Manager / designated Assistant Manager should have regard to legislation and the Code of Guidance on homelessness, and specifically consider issues around vulnerability. Where there are children in the household Managers should consider the extent of liaison that has taken place with relevant professionals in Care and Learning.
- 3.5 Following the stage 1 review Area Community Services Managers / designated Assistant Managers will notify the applicant in writing of the outcome of the review. Where the original decision on the case has been changed the notification must provide the applicant with an updated assessment against the statutory tests of homelessness. This letter must also advise of the right to a second stage review.
- 3.6 Letters requesting reviews must set out why the applicant thinks the decision is wrong in relation to the assessment provided in the homeless decision letter. For example – if the applicant has been determined as Intentionally Homeless but has Local Connection, the request letter should set out why the applicant thinks the decision regarding intentionality was wrong. If they have been determined as intentionality homeless and no local connection then both the intentionality and local connection needs to be addressed.

- 3.7 If the applicant is simply unhappy with the decision but gives no grounds for disagreeing with it, then there are no grounds for review. However Managers will 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 seeking review in writing, to ensure that vulnerable people are not unfairly disadvantaged.
- 3.8 To assist considering reviews Managers will obtain case summaries from Principal Housing Officers / other staff. **Appendix A** provides a template case report for area staff use. This is an important record of the factors considered in reviewing the case and the rationale for the decision made. It will be a critical document in any subsequent stage 2 review or judicial review of the Councils decision making.
- 3.9 Where a medical grading is a critical element of the case decision and if the grading is being disputed, or the grading was not based on information from the GP or other doctor currently treating the applicant, Managers should request an urgent review of the grading from the Medical Adviser, via the Housing Policy Officer.
- 3.10 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 Managers should consider whether to ask for an assessment of their needs from the Care and Learning Service if this has not already been done. It is important to record details of other professional opinion on **Appendix A** and the weight given to this in considering the review.
- 3.11 In considering reviews relating to the offer of suitable accommodation Managers should have regard to the Homelessness Policy, which sets out the factors that would normally be considered in determining whether an offer is reasonable. In terms of that policy applicants are entitled to one reasonable offer of accommodation.
- 3.12 The Housing Policy Officer will be able to give advice on policy and the Code of Guidance. Where legal advice is required this should be sought via the Housing Policy Officer.

4. Stage 2

- 4.1 All decision letters on stage 1 reviews will advise of the right to a second stage review if an applicant feels that all his/her circumstances haven't been fully considered in the 1st stage review.
- 4.2 A Stage 2 review will be heard by a Homelessness Review Panel, consisting of:
- Director of Community Services; Head of Housing or Area Community Services Manager (with no previous involvement in the case).
 - Council Solicitor.
 - A senior manager from Children's Services with no previous involvement in the case (where there are children in the household).

- 4.3 Requests for a stage 2 review should be addressed to the Housing Policy Officer, who will arrange for the panel to meet and will contact the applicant to advise them of the date of the review. Requests should be submitted within 14 days of the date of the notification of the outcome of the stage 1 review. The applicant should be contacted within 7 days of the request to inform them of the details of the review meeting which should normally take place within 14 days.
- 4.4 It is important that applicants have confidence that they will receive a fair hearing. Panel members must act impartially and consider cases in terms of the evidence involved in relation to the statutory tests of homelessness. Reviews should usually be conducted in as informal an atmosphere as possible.
- 4.5 It is important that all of the panels communications, conclusions and recommendations are fully and clearly expressed and capable of being understood by the applicants. As deemed appropriate by the panel, communication may involve any support necessary and/or assistance including interpretation and translation.
- 4.6 A stage 2 Review must afford the applicant an opportunity of appearing and making oral representations. If the applicant is being represented it is expected that the applicant will also attend the meeting. The venue for the meetings should take account of the applicant's place of residence and their ability to travel. This will normally require the meeting to take place within a reasonable travel distance of the applicant. The notification to be given to the applicants and any representatives must include a statement as to their rights:
- (i) To appear or to be represented at the meeting. If the applicant is being represented the applicant is also expected to attend.
 - (ii) To be accompanied by one person not including the person (if any) representing them.
 - (iii) They may if they wish lodge written representations / evidence.
- 4.7 The homelessness decision letter and subsequent notification of the outcome of a stage 1 review will provide details of the factors considered and the rationale for the decision made in relation to the statutory tests of homelessness and the Code of Guidance on Homelessness. Staff will be able to provide confirmation of factual information to applicants or their representatives in advance of a stage 2 review, subject to the normal statement of agreement from clients. It is expected that representatives will obtain full details from their clients in advance of hearings, and no further detailed case reports will be provided by the Council to representatives.
- 4.8 Requests for stage 2 reviews should detail the grounds for seeking review in relation to the assessment provided in the homeless decision letter and stage 1 response. The request should set out why the applicant believes the decision made was wrong. There is no requirement for an applicant to submit a fuller written statement in advance of the meeting, as the reasons should be set out in the request for a review, but an additional statement / evidence will be accepted if it is sent to the Housing Policy Officer no less than 24 hours prior to the date and time of the review meeting.
- 4.9 If the applicant is not present or represented at a 2nd stage review the panel will make a decision based on the evidence available.

5. Procedure at Hearing

5.1 Hearings must be held in private.

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

- The purpose and format of the meeting will be explained to the applicant.
- An Assistant Community Services Manager or Principal Housing Officer from the area team who made the original decision will explain the evidence considered and the reasons for the original homelessness decision.
- The applicant or their representative can ask questions.
- The applicant or their representative can outline why they think the decision is not correct.
- Members of the panel may ask questions at appropriate points.
- The panel will adjourn to consider the evidence heard.

5.3 All parties attending the review should normally be present throughout the proceedings.

5.4 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.

6. Decisions of the Review Panel

6.1 If the applicant is not present or represented or if the panel does not announce their decision at the end of the meeting the Housing Policy Officer will arrange for written confirmation of conclusions and recommendations to be sent to the applicant.

6.2 If the panel reach a decision on the day the applicant will be advised verbally. The Housing Policy Officer will arrange for written confirmation to be sent to the applicant.

7. Further Review

5.1 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 a review, he/she 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.

Appendix A

Pro-forma for Considering Homelessness Reviews

Section 1: to be completed by case officer / Principal Housing Officer

Applicant 1	
Name	
Date of Birth	

Applicant 2	
Name	
Date of Birth	

1.	Date of Homeless Approach		
2.	System Application number		
3.	Date Homeless Decision made		
4.	Details of Applicant's Household		
	Name	Relationship to applicant	Date of birth
5.	Is temporary accommodation being provided? If so provide address?		

<p>6.</p>	<p>Date(s), system application numbers and homeless decision of any previous homeless approaches to The Highland Council</p> <table border="1" data-bbox="188 302 1449 533"> <thead> <tr> <th data-bbox="188 302 427 342">Date</th> <th data-bbox="427 302 762 342">Application Number</th> <th data-bbox="762 302 1449 342">Homeless Decision</th> </tr> </thead> <tbody> <tr> <td data-bbox="188 342 427 383"></td> <td data-bbox="427 342 762 383"></td> <td data-bbox="762 342 1449 383"></td> </tr> <tr> <td data-bbox="188 383 427 423"></td> <td data-bbox="427 383 762 423"></td> <td data-bbox="762 383 1449 423"></td> </tr> <tr> <td data-bbox="188 423 427 463"></td> <td data-bbox="427 423 762 463"></td> <td data-bbox="762 423 1449 463"></td> </tr> <tr> <td data-bbox="188 463 427 504"></td> <td data-bbox="427 463 762 504"></td> <td data-bbox="762 463 1449 504"></td> </tr> <tr> <td data-bbox="188 504 427 533"></td> <td data-bbox="427 504 762 533"></td> <td data-bbox="762 504 1449 533"></td> </tr> </tbody> </table>	Date	Application Number	Homeless Decision															
Date	Application Number	Homeless Decision																	
<p>7.</p>	<p>In respect of the current homeless assessment - Reason for homelessness</p>																		
<p>8.</p>	<p>History – please provide details of this case</p>																		
<p>9.</p>	<p>Has applicant been assessed as homeless?</p> <p>Provide reasons and evidence including enquiries made to establish this which lead you to this decision. Include copies of documents used to influence your decision.</p>																		
<p>10.</p>	<p>Has the applicant been assessed as being vulnerable?</p> <p>Provide reasons and evidence including enquiries made to establish this which lead you to this decision. Include copies of documents used to influence your decision.</p>																		
<p>11.</p>	<p>Has the applicant been assessed as being intentionally homeless?</p> <p>Provide reasons and evidence including enquiries made to establish this which lead you to this decision. Include copies of documents used to influence your decision.</p>																		
<p>12.</p>	<p>Does the applicant have a local connection to the Highland area?</p> <p>Provide reasons and evidence including enquiries made to establish this which lead</p>																		

	you to this decision. Include copies of documents used to influence your decision.
13.	List any other factors that were relevant to the decision you made and attach copies.
14.	Are there any medical issues affecting a member of the household and how have these been considered within the homelessness assessment? (please attach a copy of any medical assessment / other evidence regarding medical needs).
15.	Are there any children in the household and have their needs been considered fully within the homelessness assessment? (please attach copies of any assessments / comments received from Care and Learning / other services)
16.	Please provide any other relevant details and/or list any relevant documents

Name and designation

Date _____

All documents provided should be copies and should be cross referenced to the section numbers above. E.g. if two documents are attached in relation to section 15 these should be referenced as 15/1 and 15/2.

A copy of the homeless assessment form does not need to be sent.

Section 2: to be completed by Area Community Services Manager / designated Manager

1	Has applicant been assessed as homeless? Summarise findings of the review and reasons for these.
2	Has the applicant been assessed as being intentionally homeless? Summarise findings of the review and reasons for these.
3	Does the applicant have a local connection to the Highland area? Sumarise findings of the review and reasons for these
4	Summarise any other factors that were relevant to the decision, including: Vulnerability Medical issues Impact on children Assessment of any mitigating factors set out in the applicants request for review

Name and designation

Date _____