

Unreasonable Complainants Policy CPP 01/09/2021

Following a 2018 complaint to the Local Government and Social Care Ombudsman, the response to which was published in August of that year, it was deemed by the Ombudsman that the use of the Unreasonable Complainants policy as it is now known by the Borough Council against a complainant had been “*unjust*” with particular reference to the requirement for an appeal. It was further recommended by the Ombudsman that the Council review its policy annually in order to ensure that the policy remained fit for purpose.

Although there was no requirement by the Ombudsman to necessarily change the policy at every review, the policy was reviewed and revised in September 2018 albeit with no amendment to the appeals process.

The intentions of the March 2013 policy being reviewed at that time were essentially good. It is indeed important to maintain such a policy in order to protect Council officers from abuse and also to reasonably limit the use of Council resources. It is important to note that there is also a duty of care upon the Council to deal appropriately not only with complaints, but also the individuals making those complaints in a fair and transparent manner. Looking at the wider picture, there is in fact a very great benefit to the Council in ensuring that alleged service failures have been appropriately addressed.

There are essentially two routes of complaint through the Council. Complaints against councillors are dealt with through the Standards process as defined in law, and where those complaints follow a lawful process, a councillor and a complainant alike can have a reasonable expectation that a fair hearing will ensue under the auspices of the Independent Person and the Standards Committee. Councillors would be the first to complain if complaints against them were dealt with behind closed doors, the outcome being reached through a process that fails to meet any test of impartiality. Complaints against Council services terminate to this day in just such a potentially partisan manner contrary to part 2, section 13.04 of the Council’s Constitution which states:

quote “The Council, councillors and officers, when acting as a tribunal or in any other quasi-judicial capacity or deciding or considering the civil rights and obligations or the criminal responsibility of any person, shall (rather than simply giving advice) follow a process which respects the requirements of natural justice and fair trial in accordance with Article 6 of the European Convention on Human Rights” unquote

In this respect, a very important legal doctrine was quoted by Cllr. Dark at the CPP meeting of October 2019:

quote “justice must not only be done, it must be seen to be done”. unquote

In view of this doctrine and the Council’s own Constitution, the debate at the CPP meeting of October 2019 addressed to good effect the matter of appeal. No longer would Council officers be faced with the difficult task of making a judgement over their work colleagues. Whilst it was deemed to be acceptable for officers to be involved in a decision to invoke the policy against a complainant in the first instance, the final arbiter on the matter was agreed to be the Standards Committee. A concern was raised at the October 2019 meeting that the remit of the Standards Committee might not extend to this role, so for reference, section 54, paragraph 3 of the Local Government Act 2000 states:

quote “A relevant authority may arrange for their standards committee to exercise such other functions as the authority consider appropriate.” unquote

Whilst the use of the Standards Committee for this purpose was recommended by the CPP at the October 2019 meeting, this recommendation was not carried forward to Cabinet.

At the October 2019 CPP meeting, Cllr. Morley proposed the use of a flow chart to explain to all concerned the process of the Unreasonable Complainants Policy. Flow charts are used by various organisations such as the Driver and Vehicle Standards Agency to very good effect, providing clear and concise guidance to all concerned; this recommendation was also not carried forward to Cabinet.

At the October 2019 CPP Meeting, it was suggested that a time limit be inserted into the policy in order to draw a line under a complaint. Where the Council invoke this policy against an individual, whilst that policy remains in place, the Council in respect of the responsibility afforded to it under the “presumption of regularity” rule ought to remain open to any new evidence whenever that evidence is presented. Whilst a study into the method to introduce new evidence was suggested by Cllr. Dark during the discussion, a time limit to new evidence was not agreed and yet, a time limit was taken forward to Cabinet.

The use of the Council’s Localism Act, section 28 Independent Person as a part of the appeals process was discussed at the October 2019 CPP meeting but the recommendation was not adopted. On further study of the role of the Independent Person, that individual can be appointed to roles that are commensurate with their primary function but under such circumstances it must be ensured that both parties would be able to discuss the complaint with the Independent Person as is required when dealing with councillor complaints and that those discussions, as per the law in councillor standards investigations, would take place before any judgment on the appeal is reached by the Council. Whilst this may seem obvious, it has historically not been the case and therefore the process by which the Council would use their Independent Person would need to be formally agreed.

Essentially, where an appeal is conducted in a fit and proper manner, service deficiencies within the Council where they exist can be addressed to the benefit of all concerned. Where an appeal is overturned, the Council will be able to demonstrate that they have behaved reasonably.

It is my proposal that with the addition of a robust appeals process, the Unreasonable Complainants Policy be returned otherwise to that as agreed in March 2013. The 2013 policy was in the main copied from the Local Government Ombudsman’s website at that time but the Council had made two significant and questionable changes requiring amendment, namely:

- The scattergun approach had been extended by the Council to include anybody that a complainant might be reasonably expected to rely on in such a potentially complex event; for example: a Member of Parliament, a solicitor, the police and in contradiction of the Council’s own Complaints Policy, a councillor!
- Where it is stated that a complainant refuses to accept the decision on a complaint, the Council had removed the text “unless new evidence is provided”. This text clearly requires reinstating.

Thank you Mr. Chair.