

EAST AYRSHIRE COUNCIL - 23 OCTOBER 2003

COMPLAINTS REVIEW SUB-COMMITTEE OF THE SOCIAL WORK COMMITTEE

Report by Depute Chief Executive/Director of Corporate Resources

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise of revised guidance provided by the Scottish Executive on the composition of Social Work Complaints Review Sub-Committees and to agree the Council's position in terms of the future composition of the East Ayrshire Social Work Complaints Review Sub-Committee.

2. BACKGROUND

- 2.1 The Social Work Complaints Review Sub-Committee has a remit to examine objectively and independently the facts of a complaint about the Council's Social Work function, as presented by (i) the complainant and (ii) Officers, and to make recommendations to the Social Work Committee.
- 2.2 The Sub-Committee formerly comprised two Elected Members drawn on a rota basis from Members of the Social Work Committee and an independent Chair drawn from a pool of "independent persons". However, the meeting of Council held on 27 June 2002 (page 12, item 2681) considered a report by the Chief Executive which advised of new guidance from the Scottish Executive on the composition of Complaints Review Sub-Committee in the light of an English High Court ruling. Following the ruling, the Scottish Executive had intimated that Complaints Review Sub-Committees should ensure that all three of its members were "independent persons" and the Council homologated action taken by the Chief Executive to comply with this new requirement in connection with a complaint at the time.
- 2.3 Separately, at a meeting of Council on 24 October 2002 (page 4, Item 2862) a decision was made to transfer responsibility for maintaining and administrating the independent membership of the Complaints Review Sub-Committee to the Depute Chief Executive/Director of Corporate Resources and to note that arrangements were underway to revise and expand the pool of available "independent persons", including exploring the possibility of inter-authority partnerships. Since then, the Council has worked with North and South Ayrshire Councils to form a Joint Ayrshire Panel of 16 independent persons who have now received appropriate training and this has been in operation since April 2003. The Complaints Review Sub-Committee has not, however, required to meet since then.

3. CURRENT POSITION

- 3.1 The Scottish Executive has now advised that, following recent decisions of the Court of Appeal in one case and the House of Lords in another, it is now no longer a requirement that Social Work Complaints Review Sub-Committees be composed entirely of independent persons.

- 3.2** The revised Scottish Executive guidance does, however, effectively allow for the possibility of Social Work Complaints Review Committees continuing to be composed of three independent persons should local authorities wish. At a local level, consultation with North Ayrshire Council and South Ayrshire Council has established that both of them intend to continue with the current arrangements. Both Councils have indicated that they would welcome a continuation of the joint Ayrshire arrangements which have been put in place.

4. LEGAL IMPLICATIONS

- 4.1** The Court of Appeal decision held that it was not inevitable that a Complaints Panel which was not entirely composed of independent persons breached Article Six of the European Convention on Human Rights (ECHR). It held that, unless there were particular factors (which were not present in that case), a subsequent judicial review of the decision-making process was capable of providing a check on the process which satisfied Article Six of ECHR.
- 4.2** In the House of Lords case, the ruling held that, in relation to certain types of the administrative decision-making, Article Six compliance could be achieved through a composite process, culminating in judicial review. Therefore, in relation to certain decisions, it was unnecessary for the administrative process itself to constitute an “independent and impartial tribunal” within the meaning of Article Six.

5. PERSONNEL/FINANCIAL IMPLICATIONS - NIL

6. CONCLUSION

- 6.1** In the light of the revised guidance from the Scottish Executive, the Council may either agree to retain the current structure of three independent persons drawn from a pool of independent persons maintained on a joint Ayrshire basis, or revert to the former composition of the Social Complaints Review Sub-Committee, as outlined at paragraph 2.2.
- 6.2** Should a decision be taken to revert to the latter arrangement, however, it should be noted that legal advice may be required from time to time to ensure that there are no factors particular to an individual complaint which would require the use of only independent persons in order to satisfy Article Six of ECHR. In either circumstance, a continuation of the Joint Ayrshire Working arrangements in terms of the maintenance of a pool of “independent persons” will require to continue.

7. RECOMMENDATIONS

- 7.1** It is recommended:-

- (i) in view of the positive perception by the public and potential complainers, and in support of the continued joint working arrangement with North and South Ayrshire Councils, that the members of East

Ayrshire Council's Social Work Complaints Review Sub-Committee continue to be drawn from the joint Ayrshire Panel of trained independent persons; and

- (ii) otherwise, to note the content of the report.

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Depute Chief Executive/Director of Corporate Resources
MA/KC

3 October 2003

List of Background Papers

1. Letter dated 1 May 2002 from the Scottish Executive on local authority complaints procedure (Beeson Ruling) and amended guidance to circular SWSG5/1996
2. Scottish Office circular SWSG5/1996
3. Letter dated 7 August 2003 from the Scottish Executive on local authority complaints procedure.
4. A further amended guidance to circular SWSG5/1996

Any person wishing to inspect the background papers relative to this report should contact Melanie Anderson, Administrative Officer on telephone number 01563 576094. Any person wishing further information in this report should contact Bill Walkinshaw, Administration Manager on telephone number 01563 576135.

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