

Council – 13th September 2010

Amendments to Constitution: Compensation payments

Service area: Legal and Constitutional Services

Wards: All

1. Summary of report

The report sets out proposed amendments to the Constitution to increase the limit of compensation payable by the Chief Executive in settlement of complaints against Walsall Metropolitan Borough Council

2. Recommendations

That the Constitution, Part 3.5 – Scheme of Delegation of functions to officers of non-executive functions (Chief Executive) be amended to read as follows:

12.5 To settle complaints prior to the involvement of the Local Government Ombudsman in accordance with the remedies guidance published by the Commission for Local Administration in England (LGO 307 (01/06).

12.6 To make compensatory payments up to a limit of £20,000 on an individual claim basis arising from reports/recommendations from the Ombudsman.

3. Background information

3.1 The Constitution (Part 3.5) currently provides for the Chief Executive to:

“12.5 To make compensatory payments up to a limit of £5,000 on an individual claim basis arising from reports/recommendations from the Ombudsman.”

This is clearly retrospective to a matter being referred to the Local Government Ombudsman.

3.2 The Office of the Local Government Ombudsman will normally order a local authority to remedy an injustice which has been caused by maladministration on behalf of a Local Authority. Section 92 of the Local Government Act 2000 confirms that council's are empowered to remedy injustice arising from maladministration where the complaint is made only to the council and not to the Office of the Local Government Ombudsman.

“92 Payments in cases of maladministration etc

(1) Where a relevant authority consider—

- (a) that action taken by or on behalf of the authority in the exercise of their functions amounts to, or may amount to, maladministration, and
- (b) that a person has been, or may have been, adversely affected by that action,

the authority may, if they think appropriate, make a payment to, or provide some other benefit for, that person.

- (2) Any function which is conferred on the Greater London Authority under this section is to be exercisable by the Mayor of London and the London Assembly acting jointly on behalf of the Authority.

- (3) In this section—

“action” includes failure to act,

“relevant authority” has the same meaning as in Part III of this Act.”

3.3 The Guidance issue by the LGO recommends that in formulating a complaints policy councils will consider the advantage of measures to ensure that remedies are implemented reasonably quickly, for example giving specific officers delegated authority to pay compensation or take other action within a defined framework.

3.4 Maladministration is about the way something is done or not done or about the way a decision is taken. The Ombudsman may not question the merits of a decision taken without maladministration. Many decisions or actions are unpopular or unwelcome to an individual citizen, but this in itself is not evidence of maladministration.

Maladministration is not defined in the 1974 Act it is left to the Ombudsman to decide. In recent years the scope of maladministration has also been influenced by the Human Rights Act and its application so that, in considering whether a local authority has acted reasonably, the LGO will take into account of whether its actions have been proportionate.

Broadly, maladministration means there has been some fault in the way an authority has or has not done something. In considering whether there has been maladministration it will usually be necessary to consider four questions:

- (i) Has the authority complied with the law, including human rights legislation?
- (ii) Has the authority complied with its own policies and procedures?
- (iii) Has the authority taken proper account of available guidance, e.g.: advice in government circulars, professional codes of conduct, advice from the LGO (guidance notes, special reports)?

- (iv) Has the authority otherwise acted fairly, reasonably or, where Human Rights Act articles are engaged, proportionately?

If any of the answers to these questions are 'no' then it is likely that the LGO would consider there had been maladministration.

- 3.5 The Council is currently carrying out a critical review of the “Tell us” complaints procedure and part of this review should encompass the role of remedies in the procedure. There will be a fine line between encouraging applications for compensation and providing a speedy means of resolving matters internally before they are referred to the Local Government Ombudsman. There is clearly a cost in any event in officer time in investigating ombudsman complaints and the reality is that the Local Government Ombudsman may make a financial award in relation to complaints following their investigation in any event. Where it is decided a financial award is an appropriate remedy for maladministration such awards could be determined by use of the LGO Guidance on Remedies and the case digest of decided cases. These are published on the LGO website. The changes proposed as part of the recommendations should assist the council in dealing more efficiently with complaints, and avoid matters escalating to the Local Government Ombudsman. Successful complaint resolution at a local level would also prevent findings being made by the Local Government Ombudsman and protect the organisational integrity and reputation of the council.

Background papers – Nil

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Signed:

Executive Director

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