

**REPORT TO: POLICY AND RESOURCES COMMITTEE - 26TH JUNE, 2006**

**REPORT ON: ENFORCEMENT AND REGULATIONS**

**REPORT BY: DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)**

**REPORT NO 412-2006**

## **1 PURPOSE OF REPORT**

- 1.1 From time to time the Chief Executive receives complaints in respect of enforcement activities and various Departments which are difficult to deal with using the current complaints procedure. It is, therefore, proposed that there should be an internal review process in respect of all the enforcement activities of the Council which would then become part of the formal Council Complaints Procedure.
- 1.2 This report outlines the current arrangements for enforcement and regulations within the Council and makes proposals for a new internal review process.

## **2 RECOMMENDATIONS**

- 2.1 It is recommended that:-
- 2.1.1 A Panel of Senior Officers be established to be led by the Depute Chief Executive (Support Services) and to include representatives from Finance, Planning and Transportation, Environmental Health and Trading Standards and Waste Management Departments.
- 2.1.2 Agree that the Panel will consider complaints or referrals from the Chief Executive regarding any of the regulatory or enforcement responsibilities referred to in paragraph 6.2 and carried out by officers acting under delegated powers.
- 2.1.3 Agree that the Panel will be chaired by the Depute Chief Executive (Support Services) or nominee who will meet with a maximum of two other Panel Members at any one time to consider cases on an ad hoc basis. In the interests of natural justice the three Panel Members considering any case will be drawn from those of the aforementioned Departments which have not previously been involved in the complaint or referred case.
- 2.1.4 Authorise such delegated powers as are necessary to allow the Panel to investigate cases referred, to consult with appropriate parties and identify options and any action.
- 2.1.5 Agree that where the Panel consider that the decision complained of should remain in force or that the complaint should not be upheld there will be no further action and the Panel's decision will be final.
- 2.1.6 When the Panel consider that there should be a review of any decision a report will be prepared for a meeting of the appropriate Committee, if necessary, and relevant parties will be invited to attend.
- 2.1.7 Decisions of the Panel will be conveyed in writing to the complainant by the Chief Executive and will be treated as the final stage in the Council Complaints Procedure.

### **3 FINANCIAL IMPLICATIONS**

- 3.1 The operation of the Panel will not incur additional expenditure but compensation or costs may require to be paid to aggrieved parties. This may be met from insurance but more usually will require to be met from Departmental revenue budgets.

### **4 LOCAL AGENDA 21 IMPLICATIONS**

- 4.1 Resources are used efficiently.
- 4.2 A mechanism will be created to hear public concerns on regulatory matters.

### **5 EQUAL OPPORTUNITIES IMPLICATIONS**

- 5.1 There are no equal opportunities implications arising out of this report.

### **6 BACKGROUND**

- 6.1 The City Council already has in place a number of complaints procedures to deal with service delivery type issues. There is, however, no formal mechanism to examine complaints arising out of decisions taken by officers acting under delegated powers in relation to the Council enforcement and regulatory functions.
- 6.2 The City Council enforces a wide range of legislation and regulates a wide range of activities. Responsibility for enforcement and regulation is not, however, centralised, it lies with different Chief Officers.

The current position can be summarised as follows

#### **Depute Chief Executive (Support Services)**

Responsible for:-

Dundee City Licensing Board (sale and supply of alcoholic liquor, bookmakers permits, betting office licences, gaming licences for casinos and bingo clubs etc)

Dundee City Council Licensing Committee (taxi and private hire car licences and driving licences, public entertainment licences, late hours catering licences, window cleaners, street traders and second hand dealers licences, houses in multiple occupation licences, taxi fares, public processions etc)

Environmental Health and Trading Standards (infectious diseases, dangerous dogs, dog fouling, health and safety at work, statutory nuisances, food safety, prevention of damage by pests, control of noise, control of pollution, unsafe goods, environmental protection, control of litter, fireworks and explosives, air quality, smoking control etc)

#### **Director of Housing**

Responsible for:-

Repairs Notices, Anti Social Behaviour Team

#### **Director of Planning and Transportation**

Responsible for:-

Amenity Notices, Repairs Notices, Buildings in Disrepair, Defective Buildings, Dangerous Buildings, Dangers on Roads, Tree Preservation, Coastal Protection

#### **Head of Waste Management**

Responsible for:-

Control of Pollution, Environmental Protection, Control of Litter, Abandoned Vehicles

### **Conflict of Interest**

Particular difficulties have arisen where a Chief Officer has delegated authority to grant consent or approval to a course of action (or decide that no such consent or approval is necessary) and is also responsible for taking enforcement action where a necessary consent or approval has not been obtained. (Examples might be, the Director of Housing's power to allow people to keep animals or to give the Housing Department's consent to alterations to ex-Council houses; the Director of Planning and Transportation's power to decide that a proposal to vary the details of a planning permission is not material etc.) This is because, having granted consent or approval (or having decided that no consent or approval is necessary), the Chief Officer will be unable to take enforcement action and there is no mechanism currently in existence which would allow the Chief Officer's actions to be reviewed in any way.

- 6.3 Where quasi judicial decisions are made by the Council's regulatory Committees and Boards then any appeal available to applicants, objectors or other parties are provided for in the governing legislation and it is not possible for the Council to add to or alter those arrangements. A number of complaints, however, relate to decisions taken by officers on a day to day basis, exercising their professional judgement and acting fully in accordance with their Scheme of Delegated Powers.
- 6.4 The most common complaints are from persons refused a consent necessary to carry out an activity or development; by persons aggrieved that no enforcement action is being taken against a party carrying out an unauthorised activity or development; complaints relating to consents having been granted without the views of third parties being considered, and complaints that decisions are reached without the applicant, objector or other third party being given an opportunity to have their views heard or any recourse to an appeal.
- 6.5 It is essential that if the Council is to carry out the very large number of regulatory functions identified in Appendix A it is necessary that officers continue to act under delegated powers. The regulatory Committees and Boards already have substantial agendas and may even wish to consider additional delegation to relieve that situation. It must also be recognised that Council staff are doing their jobs well, and that for the most part their decisions are usually unchallenged.

## **7 CONCLUSION**

- 7.1 It is, therefore, proposed that a Panel of Senior Officers be established to consider complaints regarding regulatory decisions taken by officers acting under delegated powers. These officers should be drawn from a pool of representatives from the Departments carrying out regulatory functions and should be chaired by the Depute Chief Executive (Support Services) or nominee. The Panel which would comprise no more than three members at any one time (and no member should sit in consideration of a complaint against their own Department) would meet on an ad hoc basis to consider complaints referred by the Chief Executive, Elected Members and members of the public. If it is possible for the Panel to resolve matters in the course of their investigations then no further report will be made. Equally, if the Panel do not uphold the complaint no further action will be taken and their decision should be final. In the event that the Panel consider that a decision should be reversed then a report

should be presented to the relevant Committee, if necessary, setting out the background, findings of the Panel and options for the Committee.

**8 CONSULTATION**

All Chief Officers have been consulted in the preparation of this report.

**9 BACKGROUND PAPERS**

None.

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Depute Chief Executive (Support Services)

13th June, 2006