

BRIGHTON & HOVE CITY COUNCIL

STANDARDS COMMITTEE

5.00PM – 15 JUNE 2004

HOVE TOWN HALL

MINUTES

Present: Councillor Framroze (Chair); Councillors Lepper, Older, Paskins, Mrs Theobald and Watkins.

Independent Members: Ms M Carter, Mrs H Scott, Dr M B Wilkinson (Deputy Chair).

PART ONE

ACTION

1. PROCEDURAL BUSINESS

1A. Declarations of Substitutes

| | | |
|-----|------------------------------|-----------------------|
| 1.1 | <u>Substitute Councillor</u> | <u>For Councillor</u> |
| | Older | Simson |
| | Paskins | Williams |
| | Mrs C Theobald | G Theobald |

1B. Declarations of Interest

1.2 There were none.

1C. Exclusion of Press and Public

1.3 The Committee considered whether the press and public should be excluded from the meeting during the consideration of any items contained in the agenda, having regard to the nature of the business to be transacted and the nature of the proceedings and the likelihood as to whether, if members of the press and public were present, there would be disclosure to them of confidential or exempt information as defined in Section 100A(3) or 100 1 of the Local Government Act 1972.

1.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of any of the items on the agenda.

2. CHAIR'S COMMUNICATIONS

PJ

2.1 The Chair referred to Mary Van Beinum who usually serviced the Committee, who was currently unwell. It was agreed that a card be sent on behalf of the Committee sending Mary their good wishes.

3. MINUTES

3.1 **RESOLVED** - That the minutes of the meeting held on 16 March 2004 be approved and signed by the Chair.

4. MEMBER COMPLAINTS AND SERVICE COMPLAINTS

4.1 The Committee considered a report of the Director of Strategy and Governance providing information regarding complaints about Member conduct and complaints about service issues dealt with under the Council's complaints procedures from 1 April 2003 to 31 March 2004 (for copy see minute book).

4.2 The Standards and Complaints Manager explained that although there had been an increase in the number of stage 2 complaints during quarter 4 this did not appear to be attributable to one particular service or directorate. Public Safety, City Clean, Housing Management and Customer Services had all received increased complaints but there had been no particular trend associated with the complaints about Public Safety or Customer Services. City Clean had received 6 stage 2 complaints relating to Communal Refuse containers. There had also been a considerable increase in the number of stage 1 complaints relating to City Clean, this had been largely due to issues about non-collection of refuse. Following further negotiations with the unions a number of issues had been addressed and it was anticipated that there would be a fall in the number of complaints received. Complaints about Benefits and Revenues had increased at the same time as a new computer system had been installed.

4.3 In answer to questions by Councillor Watkins regarding to school appeals, it was explained that the numbers of these tended to vary year on year. Councillor Lepper explained that the issues considered by the Ombudsman related to the process rather than the decision reached. Although Councillors no longer sat on school appeals panels they were composed of independent lay and education professionals in instances where parents/carers chose to take a complaint to the Ombudsman, action was taken against the local authority.

4.4 Councillor Watkins inquired whether it would be possible for Members of the Standards Committee to receive the full schedule of details on complaints received in the same form that it was

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prepared for consideration by OSOC, but the view of the Chair and other Members was that this would not be appropriate and would represent unnecessary duplication.

4.5 **RESOLVED** - That the contents of the report be noted.

5. REVISED WHISTLEBLOWING POLICY AND ACTION PLAN

5.1 The Committee considered a report of the Deputy Chief Executive and Director of Corporate Services seeking the approval of the updated Whistleblowing Policy and action plan for implementation (for copy see minute book).

5.2 The Director of Corporate Services explained that the report before Members and for which approval of the Council was required represented the updated and "final" version of the "Whistleblowing" Policy. It was noted in answer to questions that where "external auditors" were referred to, in practice this function was likely to be carried out by District Audit, but that ultimately authority vested with the Audit Commission.

5.3 In answer to further questions the Director of Governance and Strategy confirmed that the policy had been designed in order to provide a number of avenues which would enable staff to raise concerns they might have and to receive feedback on any action taken. Once the Policy had received the approval of Council, initiatives would be put into place to raise staff awareness of the Policy.

5.4 **RESOLVED TO RECOMMEND TO COUNCIL** - (1) That the Whistleblowing Policy, as set out in Appendix B of this report be approved and adopted; and

PJ/IW

(2) Note the contents of the Implementation Action Plan for the Policy.

6. RESULTS OF ETHICAL GOVERNANCE AUDIT 2004

6.1 The Committee considered the result of the Ethical Governance Audit 2004 representing the views of 100 Brighton & Hove City Council employees and Councillors (Members) who responded to two questionnaires at the beginning of April 2004 (for copy see minute book).

6.2 It had been promising to note that more responses had been received than for the 2001 Survey and the sample had been large enough for its broad findings to be reliable, although in some instances sub groups of respondents to particular questions were too small to be able to draw robust findings in all instances.

6.3 Overall, the survey had illustrated that there was greater awareness of many of the Council's ethical policies compared to the first ethical governance audit in 2001. Explanatory factors might include the campaign to raise members' and employees' awareness of the new constitution adopted in April 2002 and the new members training programme to familiarise them with their new mandatory code of conduct. The Council's intranet, The wave, may also have contributed to this increase in awareness as the majority of respondents to the 2004 survey said they were aware of the improved access this gave them to documents.

6.4 Ms Carter referred to the results of the survey which were heartening and commended the work of officers in carrying out the survey and drawing together its results. Notwithstanding this she did however have some concerns regarding an apparent lack of clarity amongst Members regarding declaration of an interest particularly in relation to potential indirect personal but non-pecuniary interests. Councillor Lepper was in agreement stating that given the number of outside bodies and issues that Members were involved with, this could lead to confusion and in some instances it was possible that a Member might not be aware of an indirect connection with a particular issue.

6.5 The Head of Law explained that its Members were specifically required to state the precise nature of any interest and for this to be recorded in the minutes. Whilst most Members appeared to have a clear understanding of what constituted a prejudicial interest, there was sometimes uncertainty regarding other types of interest. Where Members were uncertain whether or not they would be deemed to have an interest they often sought advice of Officers. Committee Administrators had received training in this area and had received instruction that the precise nature of any declaration made should be set out in the minutes of any given meeting.

6.6 The Monitoring Officer noted the points made and stated that in the light of them, consideration would be given to how best Members current understanding could be enhanced. Notwithstanding the valid points he considered that this did not detract from the very positive steps forward that had been achieved since the previous year's audit.

6.7 **RESOLVED** - That the contents of the audit be noted and, that consideration be given to the most appropriate means of taking on board the issues raised.

AB/DB

7. GUIDANCE NOTE AND EXAMPLES OF TREATMENT OF CONFIDENTIAL INFORMATION

7.1 The Committee considered a report of the Monitoring Officer

which had been prepared in response to Members' earlier instructions to provide draft guidance for Members' approval.

7.2 Members welcomed the updated "draft" document in that it provided a clear and concise document setting out guidance in an area which was not well defined and remained in some instances a source of confusion. In the light of recent decisions of the Standards Board it was important for Members to have a clear understanding of their rights and responsibilities. It was important whilst achieving openness and transparency on the one hand to also respect the duty of confidentiality.

7.3 Councillor Paskins tabled the following proposed amendments to paragraph 5 of the "draft" guidance:

"Paragraph 5

Is there "a public interest" defence?

5.1 The Standards Board has recently considered two complaints involving disclosure of confidential information by Members. In the cases of Councillor Allerton (East Riding of Yorkshire) and Councillor Dowding (Lancaster City Council) the Standards Board rejected arguments that the disclosure was in the public interest and suspended the Members for one month and three months respectively.

5.2 Bearing in mind that neither of the cases referred to in 5.1 were referred for a Judicial Review, and that no similar 'public interest' defence has been subjected to scrutiny in the courts, the Standards Committee agrees these Standards Board decisions represent material considerations but should not prejudice judgement of future similar cases. All Members should keep what is in the public interest separate from what may be in the party political interest."

7.4 However, Ms Carter, an independent Panel Member, stated that as it stood in law "a public interest" did not constitute defence if a Member chose such a course of action. Whilst as a lawyer she was of the view that within certain limited parameters this might be the subject of a future challenge, this was not the case at present and no successful defence made on such grounds had currently been successful. It was considered vital that the present situation was set before Members clearly and unambiguously and that to do otherwise would be misleading.

7.5 Dr Wilkinson, the Deputy Chair, was in agreement with this view considering that the position as set out in the guidance reflected absolutely accurately the position in law as it stood and that all Members needed to be aware that this was the position. Councillor Lepper concurred in this view considering that the disclosure of

confidential information into the public domain could damage lives, she would not want to see any wording amendment that could be seen as giving a 'green' light for the disclosure of confidential information.

7.6 Councillor Paskins queried the circumstances under which any given item could be deemed "confidential" and reiterated the information set out in Paragraph 2 of the "Guidance".

That although there is no legal definition of "confidential information" that is of general application. The confidentiality or otherwise of information therefore needed to be considered in the context of individual circumstances. However, by way of general indicative guidance, the following categories of information would normally be treated as confidential.

(a) Where there is a legal restriction on the disclosure of information (for example under the Data Protection Act, contractual obligations, a court order or pending legal proceedings covered with the sub judice rule).

(b) All reports that are in part II of Council or committee agendas.

(c) Where information is supplied to a Member by an officer or other person and is stated to be confidential.

(d) Matters concerning terms and conditions of employment of individual officers or pending grievance or disciplinary proceedings.

(e) Matters concerning details of commercial negotiations.

(f) Personal information concerning individual service recipients (for example child protection cases, benefits investigations etc).

(g) Information which, given its nature, timing and context is such that a reasonable person would consider it to be confidential. The disclosure of such information would normally tend to have a detrimental effect on the interests of the Council, the service users or third parties involved.

7.7 Some information which would otherwise be confidential ceases to be confidential where the public have rights of access under the law. This, for example, would cover subject access under the Data Protection Act 1998, a specific request for access under the Freedom of Information Act 2000, access to accounts and records under the Audit Commission Act 1998 as well as access to meetings and documents under the Local Government Act 1972. Such rights may be general or limited to a qualifying individual. Some rights of access to information also have procedural requirements attached to them (such as submitting the request in writing). It is therefore generally advisable for such requests to be forwarded to the relevant officer, even where the Member may have the information at his/her disposal.

7.8 Councillor Paskins referred to the initiatives being put in place to encourage officers to report their concerns ("Whistleblowing Policy" which is referred to for a decision elsewhere on this agenda) but the consensus view of Members of the Standards Committee was that Members should always be encouraged to adopt a precautionary approach and that there were procedures in place to enable Members to do so without breaking confidentiality issues.

7.9 The Chair permitted Councillor Paskins to put her petition formally to the Committee. However, with one abstention the remainder of the Standards Committee voted against the amendment which therefore was lost.

7.10 **RESOLVED** - (1) That the draft guidance attached as Appendix 2 to the report be approved;

(2) The Monitoring Officer be authorised to issue guidance to Members and Officers following Committee approval; and

(3) That the report be forwarded to full Council for information.

8. MONITORING OFFICER'S ANNUAL REPORT

8.1 The Committee considered a report of the Monitoring Officer Services on the adequacy of the current arrangements for the discharge of the Monitoring Officer's functions and presented an overall assessment of the Council's compliance with ethical standards (for copy see minute book).

8.2 The functions of the Monitoring Officer derive from statute, namely section 5 of the Local Government and Housing Act 1989 and the Local Government Act 2000. These are supplemented by the Council's scheme of delegation to Officers, various codes and protocols contained in part 5 of the Council constitution, as well as custom and practice. Broadly, these roles can be described as

covering legality, probity and good governance/administration. On 23 March 2003, it was agreed that the Monitoring Officer should submit an annual report to the Standards Committee on the performance of these functions and the adequacy of the arrangements.

8.3 He explained that the Council is obliged to provide the Monitoring Officer with the necessary resources to enable him to discharge his functions. In addition to the Deputy Monitoring Officer, who is also the Head of Law, the Monitoring Officer is supported by a number of lawyers (who attend committees and provide legal and probity advice) the Standards and Complaints Team (which deals with allegations of maladministration and investigates complaints about Members) as well as Committee Administrators (who maintain the register of Members' interests and record declarations of interest at meetings.) The Council's Internal Audit also undertake an audit of corporate governance from time to time and support the Monitoring Officer by identifying any issues and suggesting steps for improvement. These arrangements, taken together, provide the necessary expertise and resources for the effective discharge of the Monitoring Officer's functions.

8.4 The ethical standards work in the Council is lead by and co-ordinated by the Standards Committee, which consists of 10 Members (6 Councillors, 3 Independent Members and one representative of Rottingdean Parish Council.) The size of the Committee was reduced from 15 to 10 and is now more in line with the practice adopted by other authorities.

8.5 **RESOLVED** - That the report be noted.

9. ITEMS FOR INCLUSION ON THE AGENDA FOR THE NEXT MEETING

9.1

10. ITEMS TO GO FORWARD TO COUNCIL

10.1 **RESOLVED** - That Item 5, relating to the revised "Whistle Blowing Policy to go forward for decision. Item 7 relating to "Guidance Note and Examples of Treatment of Confidential Information" go forward to Council for information.

PART TWO

11. ITEMS TO REMAIN EXEMPT FROM DISCLOSURE TO THE PRESS AND PUBLIC

11.1 **RESOLVED** – That no items remain exempt from disclosure to the

press and public.

The meeting concluded at 6.55pm

Signed

Chair

Dated this

day of

2004