

FINAL REPORT

Subject Member: Councillor Nemeth
Complainant: Councillor Yates

This Report represents the outcome of an investigation carried out between April and September 2019 under Brighton & Hove City Council's arrangements for dealing with allegations of breaches of the Members' Code of Conduct under the Localism Act 2011.

The investigation has been carried out by Victoria Simpson, Senior Lawyer – Corporate Law, on behalf of the Monitoring Officer for Brighton & Hove City Council, into allegations relating to Councillor Nemeth.

V4 – 9.9.20

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1. Executive Summary

- 1.1 On 7th March 2019, Brighton & Hove City Council ('BHCC') received a complaint from Councillor Daniel Yates ('the complainant'), regarding a comment which had been posted on social media by Councillor Robert Nemeth ('the subject member'). The comment was posted on Facebook underneath a news article published by @brightonandhovenews regarding a paper which was scheduled to be considered by BHCC's Audit and Standards Committee a few days later, on 12.3.19, and which had been made publicly available.
- 1.2 The complaint is appended here as **Appendix A**, while the Facebook comment which gave rise to it forms **Appendix B**. The subject member's conduct during the course of this investigation gave rise to concerns that an additional potential breach of the Code of Conduct could be deemed to have occurred for the reasons explored in the body of this Report.
- 1.3 This Report describes the reasoning whereby the Investigating Officer reached findings on the evidence available to her. It indicates the basis on which she finds on balance that substantive breaches of paragraphs 1.2 and 1.8 of the Code of Conduct for Members have occurred.

2. Relevant legislation and the paragraphs of the Code of Conduct which may apply

- 2.1 Brighton & Hove City Council has adopted a [Code of Conduct for Members](#) in accordance with the requirements of the Localism Act 2011. While that Code was most recently updated in December 2019, the provisions relevant to this investigation have not changed during the interim period.
- 2.2 This investigation is carried out under Brighton & Hove City Council's arrangements for dealing with allegations of breaches of the Code of Conduct for Members, which are [published on the Council's website](#). They have been drawn to the attention of the parties to the complaint.
- 2.3 The complaint which is the subject of this Report was initially considered by the Monitoring Officer for Brighton & Hove City Council in accordance with the authority's Procedure for Dealing with Allegations of Breaches of the Code of Conduct for Members. After making preliminary enquiries, and having consulted with the Independent Person, the Monitoring Officer took the view that the complaint merited formal investigation. He authorised Victoria Simpson, Senior Lawyer – Corporate Law, to carry out that investigation.
- 2.4 The paragraphs of the Code of Conduct which are considered to be relevant to the alleged breaches are as follows:

Paragraph 1.2: Members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

Paragraph 1.8: members must not refuse or fail to:

- (i) co-operate with council investigations of any description, including those into alleged breaches of this Code; and/or
- (ii) provide full access to all material that, in the view of the investigating officer, may be relevant to such an investigation

3. The context and focus of this investigation

- 3.1 Local authorities have a number of statutory responsibilities in relation to homelessness in their area. To assist them in targeting relevant services and resources appropriately, they are required amongst other things to facilitate an annual estimate of the number of people sleeping rough within their area in order to generate data regarding the overall picture.
- 3.2 In his capacity as an elected councillor of BHCC belonging to an Opposition Group, the subject member took issue with the Labour led administration's approach to rough sleepers in the area by taking a Notice of Motion which sought to take issue with the measures being taken by BHCC in this area. That Notice of Motion was discussed at the Council's Neighbourhoods, Inclusion, Communities and Equalities Committee on 3rd December 2018. The subject member is minuted as having brought the Motion amongst other things 'to underline his concerns that data needed to be recorded in such fashion that meaningful comparisons could be made.'
- 3.3 Subsequent to that Committee meeting, the subject member then referred his concerns to the Council's Audit and Standards Committee on 8th January 2019 by authoring a joint Letter (attached as **Appendix C**) with two of his fellow group members seeking an independent investigation 'into the way in which a key piece of rough sleeping data has been calculated and represented by the Administration.' That Committee requested a report from the Council's Internal Audit team on the issues highlighted in the subject member's letter. The Internal Audit report which was compiled is appended here as **Appendix D**. It found that both the full-count count methodology used in 2018 and the estimated methodology used in 2017 were compliant with national guidance and 'provide a legitimate way of indicating the number of people sleeping rough and assessing change over time'. It concluded that 'the rough sleeper statistics stated at the NICE Committee in December 2018 were based on reliable and relevant data'.
- 3.4 Audit and Standards Committee considered the Internal Audit report when it was scheduled to do so, on [12th March 2019](#). It decided to note it, stating that the Committee 'did not consider any further actions were

required in response to the issues raised.’ However the comments which are the subject of this complaint were made before that Committee, on or around 7th March, this in response to a newspaper article about the published papers of the (then forthcoming) Audit and Standards Committee.

- 3.5 Particular regard was directed during this investigation to guidance issued by the Ministry of Housing, Communities and Local Government (‘the Ministry’) entitled [‘Rough Sleeping Statistics – Autumn 2018, England \(Revised\)’](#) (‘the Release’). The Release provides detailed guidance to local authorities on how to carry out an annual ‘single night snapshot’ exercise whereby the number of rough sleepers on a single night may be assessed, this using either the estimated or the full count methodology. The Release provided key contextual and other information and the decision not to append it to this Report was made purely because of its size.

4. The parties’ versions of events, and other evidence

The complainant’s position

- 4.1 The complainant has outlined his concerns in his complaint (**Appendix A**), which he considers to be self-explanatory. He contends that the subject member’s comments have had the potential effect of bringing officers’ integrity and professionalism into disrepute as well as bringing both the subject member’s own office and the council itself into disrepute.

The subject member’s response to the complaint and his actions during the investigation

The subject member’s response to the Investigating Officer

- 4.2 It has not been possible to explore in detail the subject member’s position in relation to the complaint. The reason for this is that - having initially engaged with this complaint - the subject member declined to supply evidence or otherwise engage with this investigation, stating that he had nothing more to add as he viewed the case as vexatious, this without giving reasons why.
- 4.3 The written communications on this topic between the subject member (‘the SM’) and the Investigating Officer (‘the IO’) are appended to this Report as **Appendix E**. Before the subject member disengaged, he indicated to the Investigating Officer that he considered that the administration had made a false comparison of the 2018 figure with the 2017 one. He termed this ‘fiddling the figure’, stating that ‘the Administration has misled the public.’

- 4.4 The comment above was noted insofar as it gave an indication of the subject member's position in general terms. It was not made on a public-facing forum, unlike the comments which were published on Facebook and which form the subject of the investigation.

Other Information made available to the Investigating Officer

- 4.5 The author of the Internal Audit report which was generated for Audit and Standards Committee (and which is appended to this report) shared with the Investigating Officer the detailed evidence and communications which she gathered during her investigation. This included the documentation evidencing Homeless Link's independent verification of the count process, which it oversaw in November 2018.
- 4.6 Information was also provided by the Commissioning Managers at BHCC with key responsibilities for the council's functions in relation to rough sleepers. Those include responsibilities for the processes whereby the council generates statistical data on street homelessness in the city, such as the annual snapshot. The information provided included detail on the background as well as on the conduct of the estimate and the full count in 2017 and 2018 respectively.
- 4.7 The points noted by the investigating officer having considered the information referred to above and following a detailed review of the MHCLG Release include the following:
- The two methodologies (full count and estimate), discussed in the Release published by the Ministry of Housing, Communities and Local Government, are offered as alternative means of generating statistics on rough sleeping on a 'single night snapshot' basis. As indicated in the Internal Audit report, both of those methodologies are approved.
 - The Release explicitly flags up the challenges of ensuring an accurate count or estimate, noting that while the objective is to generate data which is as accurate as possible, each process has its limitations. Importantly however the Release is equally clear that authorities have available to them either method and may choose either.
 - The decision to which of the two available methodologies local authorities might choose is one which is identified as needing to be taken with regard to the local context. There was no intimation in the Release that the fact that the other alternative methodology had been used in the previous year (in this case, an estimate as opposed to a full count) was a factor to which weight should be attached.
 - BHCC officers were clear that proper regard was had to the Release, and that the decision to hold a count in November 2018 was made because it was that it was thought more likely to generate more accurate data for BHCC given the information the

council had regarding rough sleeping in the city, this in a context where the resource existed for that method to be used.

- Officers indicated that the decision regarding the choice of methodology used in November 2018 was taken at officer level, without any input from members. Before it was taken, moreover, clarification was sought from the Ministry regarding its position on which methodology might be preferable. While the Ministry stated that either methodology would be acceptable, its representatives also indicated that their preference was for BHCC to conduct a count rather than an estimate. However this was a 'soft' indication, provided in conversation as opposed to in writing.
- The Ministry was approached by officers subsequent to the publication of the Release in February 2019 to provide additional written guidance for authorities to further illuminate the question of which methodology councils of differing sizes and demographics might favour.
- Insofar as the conduct of the count in November 2018 was concerned, it is noted that the process by which it was carried out was subject to scrutiny from independent verifiers. Homeless Link provided independent reassurance regarding how that count was carried out and how it generated the statistics which were the basis of the comment: a fact which was key to the Internal Audit report findings mentioned above.
- It is also noted that the Release (at pages 5 and 12) cites the data generated by the council using the two methodologies and relies upon them as the homelessness figures for the relevant periods.
- Finally: it is noted that the annual snapshots prepared for the MCHLG using the Release are not the only available source of data on the numbers of rough sleepers in the city. In addition to the required annual snapshot, a count is carried out every two months in conjunction with partner agencies and is [published on BHCC's website](#). The subject member's views on these figures are not known, and their existence is mentioned in order to provide context by highlighting the fact that the numbers are assessed at more frequent intervals in order to assist the council in targeting resources in this key area.

5. Reasoning regarding whether there have been failures to comply with the Code of Conduct

The comments which are the subject of this complaint read as follows:

'All councillors know the figures are fake. I'm surprised the administration is trying to keep up the deception.'

- 5.1 It was firstly noted that the comments were posted using the user name 'Cllr Robert Nemeth'. As a result of the subject member choosing to post using a profile which drew explicitly on his status as an elected councillor, rather than using a profile which he had generated in an individual capacity, there was considered to be no question mark over

whether the subject member was acting in his capacity as an elected councillor when he posted the comments. He was therefore considered to be bound by the Code of Conduct at the relevant time.

- 5.2 In terms of the substance of the comments, they are considered to raise three potential issues. The first concerns the assertion that 'all' councillors had knowledge that the figures generated during the 2018 count were 'fake'. Given the context, I take the reference to 'all councillors' to be intended to mean 'all Brighton and Hove City Council councillors'. However, I have seen no evidence to suggest that that statement is factually correct. Cllr Yates, the complainant, is clearly of a different view to the subject member as is Cllr Moonan, who is on public record as citing the figures generated via the 2018 street count. Nor is it clear which other members (if any) have the same knowledge as the subject member. While two of the subject member's Group signed the Letter which went to the council's Audit and Standards Committee seeking an independent investigation, I have no information regarding whether either of those councillors - or indeed any others - 'know' that the relevant figures are 'fake'.
- 5.3 It is noted that - having read the Internal Audit Report which had been produced following the member letter referred to above - the Audit and Standards Committee took the view that no further actions were needed. That Committee has key responsibilities for the Council's overall governance. Had it considered the figures to be fake then it would have been incumbent on it to seek further actions. That didn't happen, and nor is there any evidence to indicate that 'all' (or even 'almost all') councillors 'knew' the figures generated in the 2018 street count were 'fake'. There is no reason, therefore, to consider that part of the comment to be accurate; rather it appears to be incorrect and unfounded. It moreover creates a risk that a prejudicial perception will be generated.
- 5.4 I now consider the assertion in the second part of the first sentence that 'the figures' (interpreted in light of context to refer to the figures compiled during the street count event in November 2018) are/were 'fake'. This assertion builds context for the next claim, which is that the Labour-led administration of the time was maintaining a 'deception' which it was trying to 'keep up'.
- 5.5 I have seen no evidence to suggest that it is accurate to refer to the figures compiled as a result of the count of street homeless on the relevant night in 2018 as being 'fake'. Having had access to information regarding the detailed arrangements which were in place at the time of the count, and to the independent verifiers report, it is noted that the count was signed off as having been very well organised. Reference is made to a series of good practice aspects of the count process, including the use of drones to check rural areas and to the fact that teams of people were sent out to areas where rough sleepers were not generally found.

- 5.6 Discussion at Audit and Standards Committee highlighted the snowfall on the night of the street count in November 2018: a date which had been set some six weeks in advance of the full count. It is correct that adverse weather is cited by the Release as one factor which may impact on the challenge of generating figures which represent an accurate picture. So too is the provision of alternate beds and I note in this context reference in the independent verification report to the provision of accommodation units including twenty two Rough Sleepers Initiative ('RSI') funded units. I understand that the processes which exist to ensure that rough sleepers in the emergency shelters that are opened in adverse weather are included in the count were applied. However I reach no conclusions regarding whether the weather on the night of the 2018 count impacted on the statistics and if so to what degree, nor does this Report make any findings regarding whether the RSI funding referred to in the Release as having been received by this council had an impact on the figures generated by the 2018 count.
- 5.7 Instead, this inquiry is limited to the question of whether the subject member breached the Code of Conduct by asserting that the figures generated by the November 2018 street count and cited by Cllr Moonan were 'fake', or fabricated. It has been noted that in his Letter to the Audit and Standards Committee, the subject member amongst other things took issue with the choice of methodology used at the 2018 count. However the question of whether the figures that were generated using that methodology were 'fake' (or this aspersion that the administration had 'fiddled the figure') is an entirely separate matter, and I have seen no evidence to suggest any issue with the figures of that type.
- 5.8 It is noted that the subject member goes further than asserting that 'fake' figures were at play, this by asserting in addition that a 'deception' was being perpetuated. The use of the words 'fake' and 'deception' merit particular attention. This choice of vocabulary is considered to lend itself to a particular insinuation, namely that councillors generally, and the Labour-led administration particularly, were being duplicitous. The use of the term 'deception' is considered to be a particular issue given its potential to create the impression of active duplicity. In this context it seems to serve the purpose of insinuating that the Labour-led administration was engaging in active duplicity by creating a false impression in order to mislead the public.
- 5.9 In the context of an absence of any evidence to suggest that the figures generated from the street count were 'fake', I have moreover seen no evidence of a deception of any type being perpetuated by the administration (or indeed by officers). While members of the Labour-led administration are on record as citing the figures from the estimate in 2017 and 2018 in a comparative way, it is noted that the Ministry of Housing, Communities and Local Government also cites those same figures to note a reported decrease in the number of people sleeping rough in Brighton & Hove. On the evidence before me, therefore, I can

only conclude therefore that the comments made by the subject member appear to be without basis.

- 5.10 The complainant is concerned amongst other things that the comments above have potential to bring officers, the council and/or the subject member's office of councillor into disrepute. It is noted that the complainant makes particular reference to officers, this in a context where the decision to do a street count was taken at officer level. However, it is noted that the subject member does not explicitly reference officers as a target in any of his communications, but refers to 'the administration': a term which is considered to denote the elected councillors who provide the organisation's steer. The subject member also explicitly refuted the suggestion that he was trying to do implicate officers by email before he disengaged from this investigation. On balance, given that the comments are specifically directed at 'the administration', I do not find that he breached the Code of Conduct in his dealings with officers.
- 5.11 That said, it seems clear that the members which formed the Labour-led administration at the relevant time were being directly targeted and thereby impugned by the subject member. Clearly it is a serious matter to allege that elected members have misled the public. If evidence did exist to substantiate an allegation of the type the subject member made in the comments which form the basis of the complaint, then clearly there would be a public interest in flushing that out. However, I have seen nothing to lead me to consider that such evidence exists. On the contrary, when concerns about the methodology selected were raised by the subject member and his colleagues, these were discussed at Committee and then explored by the council's Internal Audit team before being signed off as needing no further action by the Council's Audit and Standards Committee.
- 5.12 If – as appears to have been the case - the comments which are the subject of the complaint are considered to have been unsubstantiated, then they must generate concern. This is because they impugn not just another elected member but the administration of that time as a whole, moreover using a social media profile which draws on the subject member's own position as an elected member. As a result, the comments are considered to generate the potential for damage to public perception.
- 5.13 It is noted that the comments which form the subject of the complaint were made after an Internal Audit report considering the concerns of the subject member and his colleagues and exploring them had been made publicly available. I make no finding regarding whether the posting of comments of this type on a public forum by a Committee member before the Committee had met to consider the report was appropriate. What is clear however is that posting such comments on a public forum creates the potential for a negative impression of the administration to be disseminated. Public-facing communications which

cast aspersions of this type on fellow councillors have the clear potential to bring the office of the subject member into disrepute as well as the members who are the subject of the comments. They are also considered to have the potential to bring the council as a whole into disrepute.

- 5.14 The subject member was asked - when the complaint against him was first received - to provide any evidence he considered relevant. It will be noted from **Appendix E** that he declined to co-operate in the investigation past preliminary assessment stage, indicating that he viewed it as vexatious.
- 5.15 It will be noted that there is a requirement in the Code of Conduct that all members co-operate with council investigations including those into alleged breaches of the Code. The subject member has been made aware of this provision however on 22.5.19 declined to engage when notified that the matter had been referred for formal investigation: conduct which has potential to amount to a breach of the Code of the Conduct.
- 5.16 The subject member and the complainant both received a draft copy of this Report on 24.9.19, and were asked to provide their input within a specified two week window, which they were invited to extend if not practicable for whatever reason.
- 5.17 The complainant acknowledged receipt, indicating that he had no input to make at that stage. The subject member did not make any substantive response at that point, this despite his attention being directed to the provisions of the Code of Conduct which require members to co-operate with a standards investigation, and notwithstanding the finding in the draft Report that he had breached that provision by failing to do so.

6. Findings

- 6.1 On the evidence before me, I find that two substantive breaches of the Code of Conduct have occurred.
- 6.2 It is my view that the comment posted on the Brighton & Hove Independent's Facebook page on or about 7.03.19 by the subject member does amount to conduct which could reasonably be regarded as bringing both the subject member's office of councillor and the authority itself into disrepute. I therefore find that it constitutes a breach of paragraph 1.2 of the Code of Conduct.
- 6.3 It is moreover my view that by refusing to provide his version of events or otherwise to engage with this investigation up to and including the point at which he was provided with a draft of this report, the subject member has failed to comply with paragraph 1.8 of the Code of Conduct.

Appendix A – Complaint

From: Daniel Yates
Sent: 07 March 2019 9:42 AM
To: Abraham Ghebre-Ghiorghis; Geoff Raw
Cc: Clare Moonan; Emma Daniel; Gill Mitchell
Subject: Cllr Robert Nemeth

Abraham,

I would like to raise the attached actions by Cllr Nemeth (POST APPENDED as Appx B below) as a standards matter.

I consider that:

- The audit report was in response to a specific request that Robert made
- The report is an official officer report
- The numbers are internally and externally verified
- By stating that the figures are 'made up' Cllr Nemeth is bringing the officers integrity and professionalism into disrepute
- He also is bringing this council and his role into disrepute

I would consider that appropriate action to address this could include:

- The presentation of a written letter retracting the statement, apologising and accepting the veracity of the report and the figures to the audit and standards committee when it meets to consider these issues

Should that not prove to be the case then given the closeness to election time I cannot assure myself that candidates or political opponents of Cllr Nemeth would not seek to use this public statement to exacerbate the situation.

Best wishes

Daniel Yates

Labour Councillor for Moulsecoomb and Bevendean

Leader, Brighton and Hove City Council

daniel.yates@brighton-hove.gov.uk

@danieljyates

Appendix B – Social media post which gave rise to complaint (incl link to B&H Independent News article which gave rise to it).

ve News — The Argus - News, Sport, ... Twitter Facebook

Brighton and Hove News

BRIGHTON AND HOVE NEWS

Brighton and Hove News
@brightonandhoveneews

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Council stands by rough sleeper figures
Officials have rejected claims they have fudged the figures when counting how many rough sleepers are on the streets of Brighton and Hove. A close examination of the figures was ordered after a

10 4 Comments 2 shares

Like Comment Share

Most relevant

Write a comment...

[Redacted] I have never seen so many as there are at The moment. The other day they were on every corner on North Street.
Like Reply 16h

[Redacted] What a total waste of resources that could be used in direct help to the Homeless. It is not rocket science to see in the City the extent the problem is. It beggars belief we have goodness knows how many people engaged in such exercise on figures, bell... See more
Like Reply 15h

[Redacted] Council lying as always. Corrupt and bent.
It's about time the homeless where actually recognised. Every day they go ignored and this just goes the prove how little the council want to not only accept there's a big homeless academic in Brighton but they have no intenton have solving it either.
Like Reply 15h

[Profile Picture] Cllr Robert Nemeth All Councilors know that the figures are fake I'm surprised that the Administration is prolonging this story by trying to keep up the deception.
Like Reply 10h

Write a comment...

Appendix C – Letter from subject member to Audit and Standards Committee dated 8.1.19 seeking independent investigation



Cllr. Robert Nemeth
Conservative Party Member for Wish Ward
C/o Hove Town Hall
Norton Road
Hove
BN3 3BQ

Chief Executive and
Cllr Miller, Chair of the Audit &
Standards Committee

Date: 8th January 2019
Phone: 01273 291819
e-mail: robert.nemeth@brighton-hove.gov.uk

Dear Councillor Miller,

RE: MISREPRESENTATION OF ROUGH-SLEEPING STATISTICS

We write to request an urgent investigation, with subsequent report, to be brought back to the next Audit & Standards Committee, as part of its responsibility for overseeing and monitoring performance, into the way in which a key piece of rough-sleeping data has been calculated and represented by the Administration.

Statements at a meeting of the Neighbourhoods, Inclusion, Communities & Equalities ('NICE') Committee and by council press release give the impression that the number of rough-sleepers in Brighton & Hove has fallen since last year. However, the stated methodology behind the data collection exercise is clearly in conflict with any such claim being made. We wish to understand if there is more information that has not been released, or if the information is incorrect.

At the meeting of NICE Committee on 3rd December 2018, it was announced by Cllr Clare Moonan, the Administration's spokesman for rough-sleeping that the number of rough-sleepers in Brighton & Hove had significantly dropped. We quote directly:

"The official figure verified by the independent organisation Homeless Link is 64. If you remember the official figure last November was 178. So this represents a significant drop."

The Administration's press release is set out below and, similarly, just two figures are mentioned in a way that could mislead. The only figures that are mentioned are 64 and 178. The following claim is made:

"The number of people rough sleeping in Brighton & Hove is going down."

If the number of rough-sleepers on a given date in November had fallen from 178 in 2017 to 64 in 2018, we would be delighted. However, the data comes from two different collection methods which cannot be compared.

The 2017 figure was collected using the thorough 'estimate' method which sees a number of data sources pulled together to give an estimate of the number of rough-sleepers. The 2018 figure uses the 'count' method. It is simply a count of heads on a certain night and obviously subject to variance depending on weather conditions.

Telephone: 01273 290000
www.brighton-hove.gov.uk

Given that the count was carried out on one of the most dreadful nights of the year, in snowy conditions, it was obviously lower on that particular night. It would be wrong to compare the two.

Brighton & Hove Independent reported the matters as follows (as a demonstration of how confusion arose):

"The city has seen a 'significant drop' in rough sleepers over a year if the latest council figures are to be believed."

Jim Deans of Sussex Homeless Support was highly critical of the exercise and commented as follows:

"At the moment, there are around 140 rough sleepers and many thousand more homeless in temporary or emergency accommodation, vans, caravans, boats or a mate's floor."

We are calling for a report to clear up the matter properly to avoid the Council falling into disrepute. We wish to know why it was claimed that the numbers of rough-sleeping had fallen when there does not appear to be any data to support this.

With best wishes

Cllr Robert Nemeth – Opposition Spokesman for NICE
Cllr Mary Mears – Opposition Spokesman for Housing & New Homes
Cllr Nick Taylor – Opposition Spokesman for Health & Wellbeing

Appendix D – Internal Audit Report on rough sleeping statistics

AUDIT & STANDARDS COMMITTEE	Agenda Item 62 Brighton & Hove City Council
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Subject:	Rough Sleeping Statistics		
Date of Meeting:	12 March 2019		
Report of:	Executive Director, Finance & Resources		
Contact Officer: Name:	Mark Dallen	Tel:	29-1314
	Email:	Mark.Dallen@brighton-hove.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 At Audit and Standards Committee on 8 January 2019, Members requested that Internal Audit carry out an investigation into the reliability of the rough sleeping statistics quoted to the NICE Committee (3 December 2018), which stated that the number of rough sleepers in Brighton & Hove had fallen since the last year. The audit report is attached as Annex 1.

2. RECOMMENDATIONS

- 2.1 Members are asked to note the report and consider any further action required in response to the issues raised.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 This review is an addition to the approved Internal Audit Plan for 2018/19.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The audit review has concluded that that the rough sleeper statistics stated at the NICE Committee in December 2018 were based on reliable and relevant data.
- 4.2 Both the count methodology used in 2018 and the estimate single night snapshots provide a legitimate way of indicating the number of people sleeping rough and assessing change over time.
- 4.3 The statistic calculated in any one year may be impacted by a number of different factors including the methodology applied and the weather on the date the data was collected.

5. COMMUNITY ENGAGEMENT & CONSULTATION

5.1 None.

6. CONCLUSION

6.1 The Committee is asked to note the report.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

7.1 There are no direct financial implications as a result of the recommendations of this report. This additional audit report was provided within existing resources through reprioritisation of the 2018/19 Audit Plan.

Finance Officer Consulted: James Hengeveld Date: 22/02/19

Legal Implications:

7.2 The recommendations of this report are not considered to have any direct legal implications.

Lawyer Consulted: Victoria Simpson

Date: 25/02/19

Equalities Implications:

7.3 There are no direct equalities implications.

Sustainability Implications:

7.4 There are no direct sustainability implications.

SUPPORTING DOCUMENTATION

Annexes:

1. Internal Audit Report – Rough Sleeping Statistics

Documents in Members' Rooms

1. None

Background Documents

1. Internal Audit and Corporate Fraud Strategic Plan 2018/19



Internal Audit Report

Rough Sleeping Statistics

Assignment Lead: K. Downes, Principal Internal Auditor
Assignment Manager: M. Dallen, Audit Manager
Prepared for Brighton & Hove City Council
Date: February 2019

Report Distribution List

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This audit report is written for the officers named in the distribution list. If you would like to share it with anyone else, please consult the Chief Internal Auditor.

Brighton & Hove City Council - Internal Audit Key Contact Information
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Anti-Fraud Hotline: ☎ 01273 291847, ✉ anti-fraud@brighton-hove.gov.uk

1. **Introduction**
- 1.1 At Audit and Standards Committee on 8 January 2019, Members requested that Internal Audit carry out an investigation into the reliability of the rough sleeping statistics quoted to the NICE Committee (3 December 2018), which stated that the number of rough sleepers in Brighton & Hove had fallen since the last year. The letter that generated the request is attached at Appendix A.
- 1.2 In 2017 the rough sleeping figure was reported as 178. In 2018 the reported figure was 64.
2. **Scope and Objectives**
- 2.1 Internal Audit reviewed the methodologies used to produce the rough sleeping statistics for 2017 and 2018 and checked to ensure that these had been calculated correctly and in accordance with national definitions. Specifically to;
 - Establish whether the statistics used at the NICE Committee in December 2018 were based on reliable and relevant data.
 - To establish whether there were any differences between the methodology underlying the 2017 and 2018 data.
3. **Summary of Findings**
- 3.1 The formal definition of rough sleeping is *“People sleeping, about to bed down (sitting on/in or standing next to their bedding) or actually bedded down in the open air (such as on the streets, in tents, doorways, parks, bus shelters or encampments). People in buildings or other places not designed for habitation (such as stairwells, sheds, car parks, or “bashes”).”* The definition excludes those people in hostels or shelters, people in campsites or other sites used for recreational purposes or organised protest, squatters or Travellers.
- 3.2 Any rough sleeping counts are undertaken late at night to exclude street beggars, and other individuals who do not sleep on the streets (ie: those who have some form of shelter).
- 3.3 There are two available methods to produce the rough sleeping statistic for the Ministry of Housing, Communities and Local Government (MHCLG). These are a) an estimated methodology; or b) a full-count option. In 2017, the estimated methodology was used. Following discussions with the MHCLG, in 2018 the full-count method was used.
- 3.4 The processes followed in both 2017 and 2018 were reviewed, and found to be compliant with national guidance. All rough sleeping returns submitted by local authorities are independently verified and validated by Homeless Link to ensure they are robust. Homeless Link are the national charity for organisations working directly with people who become homeless, and they were in attendance during the estimate (in 2017) and at the full count (in 2018). Homeless Link are funded by MHCLG to provide verification, validation, and guidance to local authorities for the annual rough sleeping street count and evidence-based estimate process.

3.5 In 2017, the official figure of 178 people was calculated using the estimate methodology. This comprised of data submitted from local partners:

- St Mungo's
- Brighton Housing Trust
- Project Anti-Freeze
- Clock Tower Sanctuary
- Downslink YMCA
- Sussex Police
- Equinox
- St Anne's Day Centre

The data was collated to provide an agreed figure for one night in November. The council used this estimate method in the previous three years.

3.6 The official 2018 rough sleeping figure for the council is 64 people. This figure was established by pooling one night of research undertaken across the city. Teams of outreach workers and volunteers worked together to make a record of people bedded down in the city after midnight and through the early hours of Wednesday 21 November 2018.

3.7 From a review of the Independent Verifier's 2018 report, which accompanied the return, it was noted that on the night of the count (the date having been set some six-weeks in advance) that *"there was heavy snowfall, which settled in many places, around 01:30am, the forecast had been for 2 degrees and sleet showers, so this was totally unexpected. Although it didn't affect the total number, as people in SWEP¹ were already counted, there may have already been some disruption to people's choice of sleep sites from the sleet or from people finding shelter other than SWEP."*

3.8 The Independent Verifier's report also commented that reductions (from 2017's figure) may *"also be attributed to the NSNO² Hub and RSI³ funded units, and extended outreach team with RSI funded posts."* It was also noted that the Churches night shelter opened earlier this year than previously.

4. Conclusions

4.1 Both the counts and estimate single night snapshots provide a way of indicating the number of people sleeping rough and assessing change over time. There is currently no national mechanism for recording every person who sleeps rough across the year. The single night snapshot methodology aims to get as accurate a representation of the number of people sleeping rough as possible, while acknowledging that each process has its limitations.

4.2 We therefore conclude that the rough sleeper statistics stated at the NICE Committee in December 2018 were based on reliable and relevant data.

5. Acknowledgements

5.1 We would like to thank all staff that provided assistance during the course of this work.

¹ SWEP – severe emergency weather protocol

² NSNO – no second night out

³ RSI – rough sleepers initiative

Appendix E – Communications between subject member and Investigating Officer

From: Victoria Simpson

Sent: 24 September 2019 12:28 PM

To: Robert Nemeth

Cc: Abraham Ghebre-Ghiorghis

Subject: NOT FOR CIRCULATION - confidential draft report - input sought by 8/10/19

Dear Cllr Nemeth,

Please find attached copy draft Report in this matter further to our telephone conversation last week. It is being forwarded to both you and to the complainant in draft form in confidence in accordance with para 6.3 of the Procedure. The objective is to ensure that you each have an opportunity to identify any matter which you consider requires more consideration. Once any responses have been received in and assessed against the draft then it will be finalised. That final version will be sent to the Monitoring Officer for him to review and to consider referring to a Standards Panel. You will also be provided with a copy of the final version.

You will note that the draft Report reflects my finding as Investigating Officer that two substantive breaches of the Code of Conduct have occurred, the second of which is a breach of para 1.8 of the Code. As you know, this provides that members must not refuse or fail to co-operate with an investigation such as this, including by providing full access to any material sought.

As you know, it is up to you whether or not to respond substantively. On 22nd May 2019 you stated that you were not minded to co-operate with this investigation. If your position in this regard has changed in any way then please let me know. If you do not wish to co-operate with the investigation by providing your detailed version of events, then you may wish nonetheless to flag up any matter which you consider requires further consideration and/or to make comment on the draft report. If so, then any such comments may be appended to the final version of the report, provided that the Monitoring Officer considers them to be relevant.

If you are able to respond either way then that would be very helpful. While input is normally sought within a two week window, I am aware that this report is being circulated at a particularly busy time for you. If you need more time to review it then please let me know within two weeks of the date of this email, indicating when you are likely to be in a position to consider it.

Any queries regarding the process or any other aspect then as ever please let me know.

Either way, I'd be grateful to receive your response (whether substantive or otherwise) by 8th October if at all possible.

Best, Victoria

Victoria Simpson | Senior Lawyer – Corporate Law | Brighton & Hove City Council

Room G101, Hove Town Hall, Norton Road, Hove BN3 3BQ | DX59286 Hove 1

Tel: 01273 294687 Victoria.Simpson@brighton-hove.gov.uk

All personal data processed in connection with this matter will be processed in accordance with Legal Services' privacy policies, which are available [here](#)

From: Robert Nemeth

Sent: Wed 22/05/2019 17:11

Hi

I see the case as vexatious so have nothing further to add.

Cllr Robert Nemeth - Wish Ward

Brighton & Hove City Council

@robert_nemeth

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From: Victoria Simpson
Sent: 22 May 2019 17:02
To: Robert Nemeth <Robert.Nemeth@brighton-hove.gov.uk>
Cc: Abraham Ghebre-Ghiorghis <Abraham.Ghebre-Ghiorghis@brighton-hove.gov.uk>
Subject: confidential matter - response sought by 5.6

Dear Robert,

I hope that you are well. I don't appear to have had a response from you to my letter below (appropriate section highlighted) and wanted to bring it to your attention in case it was missed during the busy pre-election period.

It would be helpful if could let me know whether you are minded to respond to my request for any information you wish to supply regarding the allegation made against you by Cllr Yates. If you do not, then the only evidence that I will have available from you to take account of in my investigation is the email you sent me at prelim assessment stage (see trail below).

I would be happy to discuss this email incl possible next steps if you indicate you'd like to. If however I don't hear back from you within the next fortnight (by the morning of Wed 5th June), then I will instead assume that you are not minded to engage and I will proceed with the investigation without your active input.

I look forward to your early response, and thank you in advance for it.

Best, Victoria

Victoria Simpson | Senior Lawyer – Corporate Law | Brighton & Hove City Council

Room G101, Hove Town Hall, Norton Road, Hove BN3 3BQ | DX59286 Hove 1

Tel: 01273 294687 Victoria.Simpson@brighton-hove.gov.uk

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From: Victoria Simpson
Sent: 18 April 2019 2:54 PM
To: Robert Nemeth; Abraham Ghebre-Ghiorghis
Subject: confidential matter - important communication

Dear Robert,

I am writing to notify you of the progress made in relation to the complaint made against you by Cllr Yates.

Outcome at preliminary assessment stage

I am writing further to my email of 21st March to let you know that Abraham has now consulted with the Independent Person at preliminary assessment stage and has agreed that the complaint against you merits formal investigation pursuant to para 5.6(ii) of the Procedure, a copy of which I attach here.

Abraham has appointed me as investigating officer, and has asked me to take all steps necessary to assess the complaint and to generate a written report regarding it. As you are aware, the process involves seeking evidence from both parties before generating a draft report which is circulated to those parties before it is finalised. The final version of that report will be reviewed by the council's Monitoring Officer and by the Independent Person and may in due course be determined by a Standards Panel which is made up of elected councillors and is chaired by one of the council's Independent Persons. You will be kept apprised of progress, and are welcome to seek an update from me at any time.

Next steps & timescales

You have already provided me with your initial thoughts - thank you for this. The investigative process involves my seeking a full written statement from the subject member, this by asking questions either by telephone or in person and preparing a draft statement for them to review. If you minded to proceed in this way then let me know when you might be free to meet me or to speak by telephone. An alternative could entail you providing your version of events yourself, in writing. It would be helpful if you could let me know how you would prefer to input, ideally within the next week. If that is not possible due to other priorities including the forthcoming local elections then it would be helpful to know when you might be able to give an indication. I can confirm that you have already had sight of all of the evidence which currently exists in this complaint.

It is not anticipated that it will be possible to complete the investigation prior to the local elections on 2nd May 2019. In accordance with the usual procedure, both parties are being asked to take all steps to ensure that all aspects of the complaint remain confidential until it has been determined.

Confidentiality

You will be aware of the concerns which arise where one or both of the parties in a complaint seek actively to publicise the matter before the complaint has been determined. I would therefore ask you to be mindful of the provisions in the Procedure which seek to ensure that confidentiality is maintained, and to let me know if you have any queries at all regarding this aspect.

Your information

You will be aware that all organisations are subject to strict requirements which ensure that they retain the personal data of individuals securely and in a compliant way. An updated privacy notice is attached which provides some key information regarding the personal data which is retained by the council in relation to this member complaint and the basis on which that data is processed.

Brighton & Hove City Council's Legal Services' team also makes certain information available online regarding the personal data which it holds and the safeguards put in place to protect that personal data. This information is available [here](#). Please let me know if you have any queries regarding this or any other aspect of this letter.

Thank you in advance for your co-operation.

Best regards, Victoria

Victoria Simpson | Senior Lawyer – Corporate Law | Brighton & Hove City Council

Room G101, Hove Town Hall, Norton Road, Hove BN3 3BQ | DX59286 Hove 1

Tel: 01273 294687 Victoria.Simpson@brighton-hove.gov.uk

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From: Robert Nemeth
Sent: 21 March 2019 10:45 PM
To: Victoria Simpson
Subject: RE: confidential matter

Thanks

Cllr Robert Nemeth - Wish Ward

Brighton & Hove City Council

@robert_nemeth

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From: Victoria Simpson
Sent: 21 March 2019 2:44 PM
To: Robert Nemeth; Abraham Ghebre-Ghiorghis
Subject: RE: confidential matter

Hi Robert, thanks for your response. I am on annual leave from now til 1st April, but am ccing in Abraham and will ensure that the Independent Person has sight of your additional reps so that a decision can be made at preliminary assessment stage in due course.

Best, Victoria

Victoria Simpson | Senior Lawyer – Corporate Law | Brighton & Hove City Council

Room G101, Hove Town Hall, Norton Road, Hove BN3 3BQ | DX59286 Hove 1

Tel: 01273 294687 Victoria.Simpson@brighton-hove.gov.uk

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From: Robert Nemeth
Sent: 19 March 2019 11:34 PM
To: Victoria Simpson
Subject: RE: confidential matter

Hi Victoria

Just quickly...

My complaint is over the false claim that was made by the Administration that rough-sleeping fell over the past year (all set out in my official complaint to Audit & Standards Committee). The claim was specifically made by Cllr Moonan but others have no doubt made it too.

The Administration's claim was made by presenting the estimated figure for the total number of rough-sleepers in November 2017 (178) and comparing it with the number of rough-sleepers that were counted on one snowy night in November 2018 (64). By making this false comparison, and fiddling the figure, the Administration has misled the public. Such behaviour is held in absolute contempt by me and various other rough-sleeping campaigners.

I don't understand where the comments about officers came from. I didn't mention officers.

Cllr Robert Nemeth - Wish Ward

Brighton & Hove City Council

@robert_nemeth

From: Victoria Simpson
Sent: 19 March 2019 4:22 PM
To: Robert Nemeth
Cc: Abraham Ghebre-Ghiorghis
Subject: RE: confidential matter

Hi Robert, thanks for your response. I've now checked in with Abraham, who tells me that he has indicated to Cllr Janio that because the matters raised by Tony Janio are the subject of a current council complaint, he (Abraham) is not in a position to discuss them.

If you have anything you'd like to say at this preliminary assessment stage re the complaint against you then - as per my email below - please let me know.

Thanks in advance, Victoria

Victoria Simpson | Senior Lawyer – Corporate Law | Brighton & Hove City Council

Room G101, Hove Town Hall, Norton Road, Hove BN3 3BQ | DX59286 Hove 1

Tel: 01273 294687 Victoria.Simpson@brighton-hove.gov.uk

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From: Robert Nemeth
Sent: 19 March 2019 12:16 AM
To: Victoria Simpson
Cc: Abraham Ghebre-Ghiorghis
Subject: RE: confidential matter

Hi Victoria

I have passed to Cllr Janio in the first instance. He has raised with Abraham directly, I believe.

Cllr Robert Nemeth - Wish Ward

Brighton & Hove City Council

@robert_nemeth

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From: Victoria Simpson
Sent: 18 March 2019 10:24 AM
To: Robert Nemeth
Cc: Abraham Ghebre-Ghiorghis
Subject: confidential matter

Dear Robert,

I'm writing further to my letter to you of last week, notifying you of the Standards complaint made by Cllr Yates.

You will note that my letter to you included a general invitation to provide any thoughts you may have regarding the complaint at this stage. Should the matter be referred for a formal investigation then I will of course write to you formally at that point to ask for your detailed input so that a written report may be prepared. However it would be helpful if you could indicate whether you do have any comments to make at this point, within the next two weeks if possible.

Thanks in advance for your response.

Best, Victoria

Victoria Simpson | Senior Lawyer – Corporate Law | Brighton & Hove City Council

Room G101, Hove Town Hall, Norton Road, Hove BN3 3BQ | DX59286 Hove 1

Tel: 01273 294687 Victoria.Simpson@brighton-hove.gov.uk

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From: Victoria Simpson
Sent: 11 March 2019 10:46 AM
To: Robert Nemeth
Cc: Abraham Ghebre-Ghiorghis
Subject: confidential matter

Dear Cllr Nemeth,

Please find attached letter plus enclosures, which I trust are self-explanatory.

Any queries, however, please do not hesitate to let me know.

Best regards, Victoria

Victoria Simpson | Senior Lawyer – Corporate Law | Brighton & Hove City Council

Room G101, Hove Town Hall, Norton Road, Hove BN3 3BQ | DX59286 Hove 1

Tel: 01273 294687 Victoria.Simpson@brighton-hove.gov.uk

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CONFIDENTIAL – ADDRESSEE ONLY

(sent by email)

Date: 11.03.2019
Phone: (01273) 294687
Fax: (01273) 291545
e-mail: victoria.simpson@brighton-hove.gov.uk

Dear Councillor Nemeth,

Re: conduct complaint

I am writing on behalf of the Monitoring Officer of Brighton & Hove City Council to give you formal notice pursuant to the Council's normal procedures that a complaint about your conduct has been received. A copy of that complaint is attached, together with supplemental information received in from the complainant. If you have any observations to make about the allegation, then please let me know as soon as possible so that they may be taken into account at preliminary assessment stage.

As you know, Brighton and Hove City Council deals with complaints of this type in accordance with an agreed procedure, the most up to date version of which is available [here](#).

That procedure provides amongst other things that councillors who have been the subject of a complaint may if they wish seek the views of an Independent Person. If you wish to explore this as an option then please let Abraham or myself know.

You will be aware that the initial stage of the process requires the Monitoring Officer to make a preliminary assessment - in consultation with an Independent Person - regarding what action, if any, should be taken. All options are considered at this stage and once a decision is made you will be notified of it and the reasons for it.

Should a decision be made to formally investigate the complaint then your input will be sought as well as that of the complainant in due course. For the meantime, I draw your attention to the provisions in the procedure which require that I discourage all parties from seeking actively to publicise this matter before the complaint has been fully determined.

Your information

You may be aware that all organisations are subject to strict requirements which ensure that they retain personal data securely and in a compliant way. Brighton & Hove City Council's Legal Services' team makes certain information available online regarding the personal data held and the safeguards put in place to protect it. This information is available [here](#) and is supplemented by the information provided in the footnote marked ** below.

I will keep you informed regarding the progress of this matter, however if you have any questions in the meantime then please free to approach Abraham or myself.

Yours sincerely,

Victoria Simpson, Senior Lawyer – Corporate Law

On behalf of

Abraham Ghebre-Ghiorghis,

Monitoring Officer of Brighton & Hove City Council