

<b>Subject:</b>	<b>Update on Standards matters</b>		
<b>Date of Meeting:</b>	<b>12 January 2021</b>		
<b>Report of:</b>	<b>Head of Law and Monitoring Officer</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Victoria Simpson, Senior Lawyer – Corporate Law</b>	<b>Tel: 01273 294687</b>
	<b>Email:</b>	<b><a href="mailto:Victoria.Simpson@brighton-hove.gov.uk">Victoria.Simpson@brighton-hove.gov.uk</a></b>	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE****1 PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 To update this Committee on complaints that Members have breached the Code of Conduct for Members determined and/or received in during this quarter, and in addition to provide an annual review of complaints against Members made between 1.01.20 and 5.12.20.

**2 RECOMMENDATIONS**

- 2.1 That Members note the information provided in this Report on those member complaints which have either been concluded since the last quarterly report or which remain outstanding.
- 2.2 That Members further note the data provided regarding member complaints received in during 2020, including the increase in the number of complaints made against elected members of Brighton & Hove City Council during that calendar year.
- 2.3 That the Committee agree to set up a cross party task and finish group of Members to review the local Code and the Council's arrangements and to make any recommendations they see fit to the Committee, with particular regard to any changes they consider might assist in dealing with the increase in complaints.

**3 MEMBER COMPLAINTS – CURRENT**

- 3.1 The complaint referred to as **O** in [the last report](#) remains at preliminary assessment stage. However, complaints **R and S** – which concerned the same comments made by a single member on social media about an individual – have now been the subject of informal resolution. The resolution involved a published admission by the subject member on social media that they had acted inappropriately by posting their strongly felt views in their capacity as a councillor of Brighton & Hove. A series of complaints – **W, X, Y, Z, A & B** were all described in the last report, which omitted to mention a seventh complaint (**'Ba'**) due to an administrative oversight. They have all now been resolved informally via a resolution which involved the member concerned publishing a statement offering their regret for the upset caused and also agreeing to undertake refresher communications training.

- 3.2 **Complaints C & D**, described in the last Update, have now been resolved by a decision to take no action on the basis that neither complaint had potential to amount to a breach of the Code. **Complaints E & F** were each the subject of an informal resolution, in both instances on the basis that the member who was the subject of the complaint published a statement apologising for the upset that had been caused to the subject of their comments. In the case of **complaint F**, the resolution also involved refresher equalities training.
- 3.3 The new complaints received in since the last Update are as follows: **Complaint G/2020** concerned an allegation of disrespect made by a constituent during an email exchange. This was dealt with by a decision to take no action as on the available facts it was not considered to be in the public interest to progress it. **Complaint H/2020** concerned a comment made by the subject member on social media about allowing others access to a resource which they might potentially have available to them in the future. This too was determined by a decision that it did not have potential to amount to a breach of the Code. **Complaint I/2020** was made against four members of the same party Group in relation to a letter sent to national government and remains at preliminary assessment stage, as does **Complaint J/2020**: a complaint about a councillor taking a position, allegedly inappropriately, on a ward matter. Finally, **Complaint K/2020** was referred to the council by the Ombudsman, who asked that it first be considered via the council's member complaints procedure. That complaint concerned a descriptive term used by an elected member during a debate on a matter of key importance to them. It was determined by a decision to take no action on the basis that it did not give rise to a breach of the Code.
- 3.4 All of the complaints referred to above have been determined by the Monitoring Officer in accordance with the procedure which governs member complaints, having first consulted with one of the council's Independent Persons.

#### 4 MEMBER COMPLAINTS – ANNUAL REVIEW

- 4.1 This part of the report reviews key data re complaints received in during 2020, up to 5.12.20.
- 4.2 This period has seen an increase in the number of complaints against Members. A total of 33 complaints about the conduct of Members of the Council were received in during this period. So, the figure for (most of) 2020 represents a significant increase on the total number of complaints made in 2019 (for the full year), which was 13.

Complaints against members made during 2019	Complaints against members made between 1.1.20 and 5.12.20
<b>13</b>	<b>33</b>

- 4.3 Members from all of the Party Groups as well as Independent Members have been the subject of complaints.
- 4.4 The following may be useful to explain how the figures are calculated:
- where more than one complaint is received in about a Member, then - even if the complaints concern the same allegation of misconduct - each is counted separately for statistical purposes.

- where a single complaint alleges misconduct by more than one elected Member of Brighton and Hove City Council (say X number of Members) then for these purposes it is considered to give rise to X number of complaints.
- 7 of the 33 complaints received in during this period all concerned substantively the same allegations of misconduct by a single Member.
- Two other complaints were made against groups of Members: one complaint against 3 Members and the other against 4.

### **Outcomes**

- 4.5 6 complaints out of the total 33 complaints made during this period remain outstanding at the current time:

<b>Total new complaints received during period</b>	Complaints outstanding	Complaints determined
<b>33</b>	6	27

- 4.6 Of the 27 complaints which had been determined at preliminary assessment stage at the time this report was finalised (21.12.20), just over half were determined by an informal resolution including an apology or some other step. The rest were determined by a decision to take no action either on the grounds that if proven the allegation would not amount to a breach of the Code, or that it was not in the public interest to progress the complaint.

<b>Total complaints determined during period</b>	Complaints resolved informally via an apology or other means	Complaints resolved via a decision to take no further action on the basis that if proven they would not amount to a breach OR that it was not in the public interest to progress the complaint.
<b>27</b>	14	13

### **Trends in subject matter of complaints:**

- 4.7 As a starting point, it was noted that most if not all Members now use email and social media to carry out their roles. Given the widespread reliance on this and (latterly) on virtual meetings, it was not considered helpful to identify where the conduct which gave rise to complaints had occurred.
- 4.8 Consideration was then given to identifying thematic trends in the complaints received in.

Table showing trends in themes:

Complaints about members' discharge of their ward responsibilities (normally made by constituents)	8
Complaints about comments or conduct either at council meetings, or at meetings at which they are representing BHCC	4
Complaints about conduct taking place outside council meetings (incl. on social media) which nonetheless concerned either council business and/or other current Members of the Council	11
Complaints about a member's conduct or position on an issue not on council business or a ward matter, including a statement reported in the press or made on social media	10
<b>Total</b>	<b>33</b>

- 4.9 It is noted that complaints about how members carry out their ward business make up less than 25% of complaints (8). While conduct at council meetings accounts for a relatively low proportion of complaints (4 out of 33), there is almost an even split between conduct outside of meetings which concerned council business or other current Members (11) and that which – while allegedly occurring whilst the Member was acting in their capacity as an elected Member of the Council – involved their taking a position or other behaviour not related to council or ward matters (10).

## **5 GENERAL OBSERVATIONS**

- 5.1 Members will have their own thoughts about the factors behind the number of complaints received in during 2020. There may well be a link with the additional pressures experienced by all local authorities this year and the specific challenges of the current time. Either way, the increase in complaints during 2020 is notable and carries its own resource burden.
- 5.2 Members will be aware that - since the passing of the Localism Act 2010 – local authorities have a greater degree of control over their arrangements for dealing with Member complaints. That is part and parcel of the current framework, which gives authorities very limited power to impose sanctions. Standards Committees have no power to suspend a Member and may only censure a Member or take measures such as recommending training or other steps which the subject Member is free to accept or reject.
- 5.3 Notwithstanding the limited sanctions available, local authorities are nonetheless obliged to have in place arrangements for dealing with complaints against elected members, and the Council has adopted arrangements which aim to be relatively light touch whilst also being fit for purpose.
- 5.4 In this context, the carrying out of a formal investigation leading to a Panel is undoubtedly the most resource-intensive process for all parties, including for the members of the Panel and the subject member as well as for officers. Members will be aware that only rarely do member complaints culminate in a full Panel hearing (just one took place in 2020).
- 5.5 However even where complaints are determined outside a formal Panel hearing, the resource invested in progressing them to conclusion is significant. Resolving

matters at an early stage where possible - even where there is an arguable breach – can often be the best way of moving forward in a context where options are limited. While the Monitoring Officer has discretion to resolve complaints informally at any point in the process (having first consulted both with one of the Independent Persons and also – where the complaint is capable of amounting to a breach – the complainants and the subject member), the process is resource-intensive. This is because it involves liaising with all parties (with communication between the complainant, the subject member and other stakeholders, as well as the Independent Person and the Monitoring Officer), while adhering to a process which is visibly fair to all stakeholders.

- 5.6 A further factor is Members' willingness to co-operate with the process, which can vary significantly. Where a Member is unresponsive or fails to engage then - whether or not a formal investigation ensues - this can cause unnecessary and avoidable delay. This is an area which has been brought to the attention of relevant Members with a view to ensuring that dealing with complaints does not use up any more resource than they need to.

## **6 PROPOSAL FOR A TASK AND FINISH GROUP**

- 6.1 The Council last reviewed its standards arrangements against the detailed work done by the Committee on Standards in Public Life ('the CSPL') in 2018-2019. The CSPL's best practice recommendations for local authorities were considered by this Committee in a detailed way by a cross party group of Members. In [January 2020](#) this Committee considered that work and approved its recommendations, by amongst other things updating the Code of Conduct and the Procedure for Dealing with Allegations of Misconduct by members.
- 6.2 Given the increase in the number of complaints, and in the context of a best practice CSPL recommendation that all authorities review their Codes every twelve months in any event, it is considered that a task and finish working group of members might again usefully review the council's arrangements. This cross-party group could review the Council's options for further amending the Code, including by taking into account the LGA model Code of Conduct which was due to be published in November 2020 and is expected imminently. The task and finish group could also identify and review the Council's options for streamlining the Standards process. This could for instance involve considering whether the Procedure might be amended by clarifying or amending the Public Interest test against which complaints may currently be assessed when deciding whether to progress them, or by making other recommendations for change.
- 6.3 In conclusion: it is suggested that the reported upswing in complaints be noted and that it be taken into account by a task and finish Member Working Group, convened to review the Code of Conduct and to consider whether any changes to the Council's arrangements for dealing with complaints might make a positive difference.

## **7 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 7.1 The Council is obliged under the Localism Act to make arrangements for maintaining high standards of conduct among members and to make arrangements for the investigation of complaints. The current arrangements and the proposals in this Report reflect this. No alternative proposals are suggested.

## **8 COMMUNITY ENGAGEMENT & CONSULTATION**

8.1 No need to consult with the local community has been identified.

## **9 CONCLUSION**

9.1 Members are asked to note the contents of this Report, which aims to assist the Committee in discharging its responsibilities for overseeing that high standards of conduct are maintained in a way which is compliant with local requirements.

## **10 FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

10.1 There are no additional financial implications arising from the recommendation in this Report. All activity referred to has been met from existing budgets. While future activity is expected to be manageable within existing resources, a sustained increase in complaints may ultimately lead to a consideration of a change in the resources required to support the process, which, if this were to require an increase in resources, may have a budgetary implication.

Finance Officer Consulted: Nigel Manvell

Date: 21/12/20

### Legal Implications:

10.2 These are covered in the body of the Report.

Lawyer Consulted: Victoria Simpson

Date: 21.12.2020

### Equalities Implications:

10.3 There are no equalities implications arising from this Report.

### Sustainability Implications:

10.4 There are no sustainability implications arising from this Report.

### Any Other Significant Implications:

10.5 None

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

None

### **Background Documents:**

[The report on Local Government Ethical Standards](#) published by the Committee on Standards in Public Life on 20.01.19.