

Brighton & Hove City Council

Procedure for Dealing with Allegations of Breaches of the Code of Conduct ~~by~~ Elected and co-opted Members

1. Introduction and legal framework

- 1.1 This procedure is made in accordance with section 28(6) of the Localism Act 2011 which requires the council to have in place arrangements for investigating and determining allegations that a member or co-opted member of the council has failed to comply with its Code of Conduct for Members.
- 1.2 This version of the procedure supersedes all previous versions.
- 1.3 The Code of Conduct to which this procedure relates was originally adopted by the Council in 2012 in accordance with section 27 of the Localism Act 2011, has been updated regularly ~~undergone minor revision~~ since then. ~~It is, and is~~ set out at Part 8.1 in the Council's Constitution

2. Principles

The principles underpinning the procedure are:

- (i) the imperative of generating and maintaining a drive to engender member and public confidence that ~~—~~allegations of member misconduct will be dealt with effectively ~~and~~ efficiently and proportionately;
- (i) —
- (ii) that all parts of the process will reflect the Council's commitment to resolving complaints against members ~~Standards Panels reach their findings in a such a way that is proportionate, transparent and fair to all parties~~ and independently;
- (iii) that complaints are only referred for formal investigation and thereafter (if relevant) for determination by a Standards Panel where doing so is considered to be proportionate and necessary in the public interest;

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~~(iii)~~(iv) that Standards Panel hearings ~~are~~ be conducted openly, wherever possible

3. Making a complaint

- 3.1 If a person wishes to make a complaint about Member conduct, they should write to:

The Monitoring Officer
c/o Standards ~~and~~ Complaints
Brighton & Hove City Council
Hove Town Hall
Hove BN3 3BQ

Or use the following Web link: [Councillor Complaint](#)

- 3.2 The complainant will be asked to provide their name and a postal or email address. Only complaints from named individuals will be accepted.
- 3.3 Council officers wishing to complain about Member conduct are recommended to use the Code of Conduct for Member/Officer Relations but still have the option of using the complaints procedure set out here.
- 3.4 The Monitoring Officer will inform the complainant that their complaint will be assessed against the Code of Conduct for Members and that they may if they wish seek the views of one of the Council's Independent Persons.
- 3.5 The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it, and will send the complainant standard information about the Council's policy on disclosing their identity, as set out in paragraph 4.2 below; ~~and will require the complainant to confirm their agreement to this policy, in order for the complaint to proceed.~~
- 3.6 ~~The Council aims to complete the complaint process within a maximum of three months from receipt.~~
- 3.7 Once a complaint has been made to filed with the Monitoring Officer, it may ~~only be with~~not be withdrawn by the complainant where the Monitoring Officer considers (in accordance with the principles outlined at para 2(iii) above) that doing so is proportionate and necessary in the public interest~~without the consent of the complainant, the subject member and the Monitoring Officer.~~
- 3.8 At an early stage in communications, the Council will discourage all parties – both the complainant and the subject member, as well as any

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other parties - from seeking actively to publicise the matter before the complaint has been fully determined.

- 3.9 The potential for a conflict of interest to arise will be considered when the complaint is first received in, and will be kept under subsequent review. If any actual or potential conflicts are identified, then appropriate arrangements will be made to prevent them impacting negatively on the process.

3.10 All complaints are expected to be determined promptly and without undue delay.

4. Information provided to the Member complained about

- 4.1 The Member against whom the complaint is directed (the 'subject member') will be notified that a complaint has been received as soon as possible and in any event within 5 working days of the council receiving it, unless the Monitoring Officer considers that doing so may prejudice any investigation into the complaint.
- 4.2 The Monitoring Officer will provide the subject member with all documentation relevant to the complaint, including the identity of the complainant except where doing so might compromise the complainant's safety (see also paragraph 6.2 below).

4.3 When notifying the subject member of the complaint, the Monitoring Officer will offer them the opportunity (within a defined timescale) to provide information and/or make any representations which they consider may assist at preliminary assessment stage.

4.4 The subject member will be alerted at an early stage that they may - if they wish - obtain input from an Independent Person not otherwise involved in the complaint at preliminary assessment stage. If they indicate they wish to do so, then the Monitoring Officer will facilitate a process whereby they receive confidential input from the Independent Person. This input will be provided in accordance with the Independent Person's statutory role and may involve their expressing their view on possible next steps in the handling of the complaint.

5. Preliminary assessment

- 5.1 Subject to paragraph 5.2, the Monitoring Officer will, in consultation with one of the Independent Persons, carry out a preliminary assessment in order to determine what action should be taken.
- 5.2 The Monitoring Officer reserves the right to refer the preliminary assessment to the Standards Panel in respect of any complaint.

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5.3 The Monitoring Officer will seek to complete ~~their~~his/her preliminary assessment promptly and in any event within ~~40 working~~28 days of receiving a valid complaint. ~~This, although the~~ process may on occasion take longer if ~~additional~~more information is required from the complainant or subject member (or both) for a proper assessment to be made.

5.4 Pursuant to paragraph 5.3, the Monitoring Officer may – having regard to the views of the relevant Independent Person – undertake ~~small-scale~~ preliminary enquiries directly related to the complaint; to help determine whether a formal investigation is required.

5.5 ~~In the course of the~~ Based on the preliminary assessment, the Monitoring Officer may decide **not** to progress the complaint having first consulted with the Independent Person and having applied the following tests: ~~where—~~

a) can we investigate the complaint?

- Is the person being complained about a councillor?
- Did the conduct occur within the last six months?
- Is the conduct something that is covered by the code?

b) should we investigate the complaint?

- Is there sufficient evidence to support the complaint?
- Is the conduct something which it is possible to investigate?
- Would a formal investigation be proportionate and necessary in the public interest?

- ~~(i) the complaint is vexatious or frivolous in nature;~~
- ~~(ii) if proven, the complaint would not amount to a breach of the code of conduct for members; or~~
- ~~(iii) it would not be in the public interest to do so.~~

5.6 Throughout the process, the Monitoring Officer will keep under review all informal options available to them for resolving the complaint, including informal settlement (whether by apology or other remedial action, or mediation), including as outlined in para 5.8 below.

5.7 Where the complaint is considered to satisfy the tests outlined in circumstances in paragraph 5.5 a) and b), do not apply, the Monitoring Officer may:

- (i) seek to resolve the complaint informally in accordance with paragraph 5.6 above. or;
- (ii) arrange for the complaint to be formally investigated;

5.7 An informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, and/or some other action on their part. Where the Member makes a reasonable offer of

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informal resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation. In any event, the Monitoring Officer retains the discretion to resolve matters informally having consulted with the parties as well as with one of the Independent Persons.

- 5.8 Where the complainant and subject member have consented to resolve the complaint informally by a particular means (for example, by written apology), the member should co-operate with and adhere to the terms of that resolution in accordance with the requirements of the Code of Conduct for Members at measure.
- 5.9 Complaints settled informally, whether at this stage or during the course of a formal investigation, will be reported to the Audit & Standards Committee but without naming the parties involved. Complaints which proceed to formal hearing and which conclude with the finding of a substantive breach will normally be reported to full Council in any event.
- 5.10 Where the parties attempt to resolve the matter informally but fail to reach a mutually agreeable outcome, the matter ~~will, subject to 5.7 above, may~~ be referred for formal investigation after the tests in para 5.5 a) and b) have been applied. – In ~~any the~~ subsequent report to a Standards Panel, it will be stated that informal resolution was attempted but did not succeed, although a detailed account of the - Details of the negotiations comprising those attempts will not be published.
- 5.11 If the complaint identifies conduct which, on the face of it, is a criminal offence or regulatory breach by any person, the Monitoring Officer may refer the matter to the Police and/or appropriate regulatory body as well as, or in lieu of, an investigation by the council.
- 5.12 On completion of the preliminary assessment, the Monitoring Officer will inform the - complainant and subject member of his/her/their decision regarding next steps, giving, -with reasons.

6. Formal Investigation

- 6.1 If the Monitoring Officer has applied the tests outlined above in para 5.5 above and has additionally considered all available options for informal resolution (paras 5.6 and 5.8) and nonetheless decides that a complaint merits formal investigation, they he/she will appoint an Investigating Officer. The Investigating Officer, -who m may be another officer of the council, an officer of another local authority or an external investigator. The Investigating Officer will, subject to any direction from the Monitoring Officer, have discretion as to how the investigation is carried out.

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- 6.2 The Investigating Officer will ask the complainant and the Member to provide their detailed explanation of events, and will identify what documents he/she needs to see and whom he/she needs to interview. In exceptional cases, it may be appropriate to keep the identity of the complainant, witnesses, or key documents confidential where disclosure might prejudice the investigation.
- 6.3 The Investigating Officer will produce a draft report and send copies, in confidence, to the complainant and subject member, to give both an opportunity to identify any matter in the report which they feel requires more consideration.
- 6.4 Having received and taken account of any comments on the draft report, the Investigating Officer will send ~~his/her~~their final report to the Monitoring Officer. If the Monitoring Officer is not satisfied that the investigation has been conducted properly or that aspects of the report require revision or clarification, ~~he/she/they~~ may ask the Investigating Officer to reconsider their ~~his/her~~ report.
- 6.5 Copies of the final report will be sent to the complainant and to the member concerned.

6.6 During the investigative process, the Investigation Officer will keep the Monitoring Officer informed regarding progress. At any point during the investigation process, the Monitoring Officer may review the complaint against the tests in para 5.5, halting the investigation if necessary to actively consider options for resolving matters informally pursuant to paras 5.6 and 5.7.

~~6.6.7~~ If informal resolution is contemplated, then the Monitoring Officer will may consult the parties on their views as an alternative to continuing as to whether they would accept an informal settlement rather than continue with the formal investigation. The process of consultation will involve offering the complainant and subject member the opportunity to make representations, which will be taken into account by the Monitoring Officer when making their decision. Having had regard to the wishes of the parties and the views of the Independent Person, the Monitoring Officer may at any point halt the investigation in order to and seek to resolve the matter informally. While resuming the Should that course of action prove unsuccessful, the formal investigation (if one is already underway) would remain an option in such a situation, would normally be resumed. However the Monitoring Officer retains the discretion to resolve matters informally where they consider that an informal resolution is proportionate and necessary in the public interest having first consulted with the parties as well as with one of the Independent Persons where s/he considers that doing so to be in the public interest. Where a matter is determined by informal resolution after it has been referred for formal investigation, then

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reasons will be provided to the parties when they are notified of that outcome.

7. Investigation Outcomes

7.1 On completion of a formal investigation, the ~~findings available to the~~ Investigating Officer has available to them a series of options in respect of each element of the allegation of a breach of the Code of Conduct. These are considered relevant are:

- (i) To make a preliminary finding that no breaches have occurred
- ~~(i) A substantive breach~~ To outline the facts and highlight material considerations without making a preliminary finding or taking an indicative view.
- (ii) To take an indicative view that one or more breaches (whether technical, minimal or substantive) have occurred
- ~~(ii) A technical but minimal breach~~
- ~~(iii) No breach~~

7.5 Preliminary finding of no breach

7.5.1 If the Investigation finds no breach of the code of conduct, and the Monitoring Officer considers – after consultation with the Independent Person – that there is no public interest in pursuing the matter further, they will contact both parties to ask if they accept the finding and are willing to end the matter there. If they respond in the affirmative, the Monitoring Officer will confirm to the parties in writing that the complaint will be taken no further. If either party rejects the finding or is not willing to conclude the matter, they may make representations to the Monitoring Officer as to why the complaint should nonetheless be referred to the Standards Panel. However the Monitoring Officer retains the discretion to decide to resolve the matter informally, without referral to a Panel.

7.5.1 Similarly the Monitoring Officer may, having consulted one of the Independent Persons, refer the complaint to the Standards Panel, even where the investigation finds no breach and the parties are willing to terminate the matter.

7.2 Outline of the facts without making a preliminary finding

Where the Investigating Officer does not make a finding or take an indicative view as to whether or not a breach has occurred, then it is for the Monitoring Officer to decide in consultation with the Independent Person whether referring the complaint to a Standards Panel for determination is proportionate and necessary in the public interest or whether to resolve matters informally. The Monitoring Officer may make this decision themselves or refer this decision to a Panel, as long as the parties to the complaint have first been given the opportunity to make representations which have been taken into

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account and the Independent Person has been consulted. Reasons for such a decision will be given

7.2-3 Indicative view: sSubstantive breach.

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Where the Investigating Officer finds that the subject member has substantively breached one or more elements of the code of conduct, the Monitoring Officer will normally refer the complaint to the Standards Panel for determination.

However where the Monitoring Officer considers exceptionally that it would not be proportionate and necessary in the public interest to refer the breach to a Standards Panel and has consulted with one of the Independent Persons, then provided that that Independent Person agrees, the Monitoring Officer may recommend to the parties that the matter be settled informally and invite the parties to make representations regarding whether or not they agree. While either the complainant or the subject member may request that the matter be referred to a Panel for determination, the Monitoring Officer will retain the discretion to resolve matters informally having consulted with all of the parties.

7.43 Indicative view: tTechnical but minimal breach.

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7.34.1 This finding reflects a set of circumstances where the conduct complained of does – on a strict interpretation – amount to a breach of the code, but little or no culpability attaches to the subject member. This could occur, for example, where the member had made an unintentional and minor administrative error on their declaration of interests by recording relevant information but under the wrong class of interest.

7.34.2 Where the Monitoring Officer, after consultation with one of the Independent Persons, considers that it would not be in the public interest to refer a technical but minimal breach to a Standards Panel, he will recommend to the parties that the matter be settled informally. While either party may request that the matter is referred to a Panel for determination, the Monitoring Officer will retain the discretion to resolve matters informally having consulted with all of the parties.

7.4 — No breach

~~7.4.1 If the Investigation finds no breach of the code of conduct, and the Monitoring Officer considers — after consultation with the Independent Person — that there is no public interest in pursuing the matter further, he will contact both parties to ask if they accept the finding and are willing to end the matter there. If they respond in the affirmative, the Monitoring Officer will confirm to the parties in writing that the complaint will be taken no further. If either party rejects the finding or is not willing to conclude the matter, they may make~~

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~~representations to the Monitoring Officer as to why the complaint should nonetheless be referred to the Standards Panel. However the Monitoring Officer retains the discretion to decide to resolve the matter informally, without referral to a Panel.~~

~~7.4.2 Similarly the Monitoring Officer may, having consulted one of the Independent Persons, refer the complaint to the Standards Panel, even where the investigation finds no breach and the parties are willing to terminate the matter.~~

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8. Standards Panel

- 8.1 As soon as reasonably practicable after referring a completed investigation to the Standards Panel for hearing and determination, the Monitoring Officer shall convene a meeting of the Panel.
- 8.2 The Monitoring Officer shall select the persons to comprise a Standards Panel, in accordance with the following criteria:
- 8.2.1 Membership of a Standards Panel is restricted to persons who –
- (a) are a member of Audit & Standards Committee; and
 - (b) have attended the necessary training and re-training sessions specific to these Panels
- 8.2.2 The Panel shall consist of 3 or 5 elected members, appointed on a cross-party basis, plus one Independent Person who shall chair the Panel but not vote.
- 8.2.3 If more than the minimum number of qualified persons (pursuant to paragraph 8.2.1) are available for a particular Panel, selection will be based on (i) the criteria specified in 8.2.2 and (ii) in such a way that ensures a spread of experience across the Panel.

9. Arrangements for and Conduct of the Standards Panel Hearing

- 9.1 There is a presumption of openness with regard to Panel hearings. Hearings will be conducted in open session unless the Panel resolve that the public be excluded on one or more of the grounds permitted under Part VA of the Local Government Act 1972.
- 9.2 Where the hearing itself is open to the public, the Panel's deliberations following the hearing will be held in private.
- 9.3 Care is needed to ensure that the published report detailing the allegation and investigation does not unlawfully disclose personal or sensitive personal data of any party. Accordingly, the Monitoring Officer shall have discretion to redact material from the published report where necessary for data protection purposes.

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- 9.4 Where the complaint concerns the use of an offensive word or expression, the wording will not be repeated in the Panel report more than is necessary and in any event placed within inverted commas, to indicate the words were those allegedly used by the subject member.
- 9.5 To coincide with the publication of the hearing report, the Council shall (unless the Panel is being advised to consider excluding the public from the hearing) issue a press release about the hearing, which shall include an explanation of the Independent Person's role. Advice will be sought from the council's ~~Head of Communications~~ team regarding ~~to~~ the precise content of the release.
- 9.6 The Independent Person, in ~~their his/her~~ capacity as Panel chair, may – after consulting the Monitoring Officer – issue directions as to the manner in which the hearing is to be conducted.
- 9.7 Adequate security must be in place throughout the hearing, to protect Panel members and other parties actively involved in the hearing against threats or intimidation.
- 9.8 Arrangements must be made to ensure the privacy of the Panel while in recess following the hearing.
- 9.9 Arrangements must enable the Panel to conduct their deliberations in recess without feeling pressurised to reach a decision within a set time.
10. Reaching a Decision
- 10.1 In accordance with statutory requirements, the voting members of the Panel must seek and take into account the views of the Independent Person before reaching their decision in respect of the allegation.
- 10.2 The Panel should, where possible, reach their decision by consensus and vote by acclamation. Where there is disagreement, the matter shall be put to a vote with Members voting for or against the proposal..
- 10.3 The decision of the majority of the Panel Members shall constitute the decision of the Panel. The Chair, being an Independent Person, shall not be permitted to vote or exercise a casting vote.
- 10.4 In the event that no majority decision can be reached (e.g. where one voting member felt unable to decide the allegation), the Panel will make no finding and a fresh Panel shall be appointed to re-hear the complaint.
- 10.5 The decision of the Panel should be owned collectively by all its Members and Panel Members should, as far as reasonably practicable, avoid statements or actions that undermine public confidence in the complaints process.

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11. Range of decisions available to the Standards Panel

11.1 Having heard the allegation, the Standards Panel may –

- (i) find that the subject member **did fail** to comply with the council's code of conduct for members in one or more respects;
- (ii) find that the subject member **did not fail** to comply with the council's code of conduct for members;
- (iii) **make no finding** in respect of the allegation. It is open to the Panel merely to note the issues raised by the complaint and, if appropriate, to make recommendations which address them.

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11.2 Even where the Panel finds a breach, it is not obliged to take action in respect of the member. In accordance with section 28(11) of the Localism Act, it must have regard to the failure in deciding *whether* to take action and, if so, what action to take.

11.3 Neither the Standards Panel nor any other body of the council has power to suspend or disqualify a member or to withdraw their basic or special responsibility allowance.

11.4 Where a Panel finds that a substantive breach has occurred then it will normally both:

- (i) ~~publishing its findings in respect of the member's conduct; and~~
- (i) report its finding to full Council for information in any event.

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11.5 Actions the Panel may take in relation to a member who has failed to comply with the code of conduct include:

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- (ii) ~~publishing its findings in respect of the member's conduct;~~
- (iii) writing a formal letter to the member, which could include recommended actions such as an apology;
- (iv) recommending to full Council that it does not appoint the relevant member onto any body which is within its (full Council's) gift;
- (v) ~~reporting its findings to Council for information; or~~ recommending to Council that it takes one or more of the actions listed here;
- (iv) ~~—~~
- (vi) formal censure;

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- ~~(vi)~~(vii) recommending to the member's Group Leader that he be removed from any or all of the council's committees or sub-committees;
- (viii) recommending that the Monitoring Officer offer appropriate training

Note:

~~(vii)~~

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12. Publicising the Panel's Decision

At the end of the hearing or as soon as possible thereafter, the Chair will state the decision of the Standards Panel as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Standards Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Standards Panel, send a copy to the complainant and the member, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Audit and Standards Committee.

13. Right of Appeal

- 13.1 Subject to paragraphs 13.2 to 13.4, the complainant and subject member may each appeal the decision of the Standards Panel.
- 13.2 A request for an appeal must be made in writing to the Monitoring Officer and set out reasons for the request, with reference to the grounds set out in paragraph 13.4.
- 13.3 The appeal request must be received by the Monitoring Officer within 10 working days of the original Panel hearing.
- 13.4 The appeal request will only be granted if one or more of the following criteria are met:
 - (i) the hearing was procedurally flawed; a relevant consideration was not taken into account; or an irrelevant consideration was taken into account;
 - (ii) new evidence or material has arisen with a direct and significant bearing on the allegation; or
 - (iii) the Panel's decision was irrational, meaning it was so unreasonable that no sensible Standards Panel, having

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applied its mind to the complaint, could have arrived at that decision.

- 13.5 The decision as to whether the appeal request does fulfil one or more of the above criteria, resulting in the request being granted, shall be in the sole discretion of the Monitoring Officer, in consultation with the Independent Person.
- 13.6 In the event that an appeal is granted, a Standards Panel composed of different members to the one that heard the original case will consider the entire case. The appeal Panel may dismiss or uphold the appeal. If they uphold the appeal, they may substitute the original decision with a new decision. If the appeal Panel considers that essential information was not included in the investigation, they may refer the complaint back to the investigation stage.
- 13.7 There is no internal right of appeal from the decision of the appeal Panel.

