

# Brighton & Hove City Council

## Audit & Standards Committee

## Agenda Item 27

**Subject:** Standards Update

**Date of meeting:** 29 November 2022

**Report of:** Monitoring Officer

**Contact Officer:** Name: Victoria Simpson, Senior Lawyer – Corporate Law

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**Ward(s) affected:** All

**For general release**

### **1 Purpose of the report and policy context**

1.1 To provide Committee with a quarterly update on member complaints and on Standards-related matters.

### **2 Recommendations**

2.1 That Committee notes the information in this Report.

### **3 Context**

#### **Background**

3.1 Members are aware of the provisions in the Localism Act 2011 which require the Council to maintain arrangements for reviewing and determining complaints that elected and co-opted members have breached the Council's Code of Conduct for Members.

3.2 This Report provides information to assist this Committee in discharging its delegated responsibilities to promote and maintain high standards of conduct by members.

#### **Member complaints: the overall picture**

3.3 A key aim of the regular update report is to provide reassurance regarding the progression of standards complaints which the Council has received and which it has either determined recently or is in the process of considering. In this context, Members' attention has been drawn to the challenges generated by the increase in complaints against elected members in recent months.

- 3.4 A Report providing members with the overall picture regarding complaints made during 2022 is planned for the next meeting of this Committee, in January 2023. This will provide data on member complaints over a twelve month period. It will endeavour to identify any overall trends both in terms of the volume of complaints and their subject matter.

#### **4 Member complaints previously reported to this Committee**

- 4.1 Complaint **M/2021** was referred to in the last report as having not yet been concluded. The Monitoring Officer reviewed the complaint against the tests provided in the Procedure for Dealing with Allegations of Breaches of the Code of Conduct by Elected and Co-opted Members. The Monitoring Officer took the decision to resolve the matter informally on the facts, discontinuing the investigation on the basis that a formal investigation was no longer proportionate and necessary in the public interest. As a result, the process has been concluded.
- 4.2 Complaints **F1/2021** and **O1/2021** concerned an elected councillor who has continued not to engage with the complaints process despite being informed that the Monitoring Officer took the view that their conduct had potential to amount to a breach of the requirement that they treat others (including officers) with respect. While no apology has been forthcoming, the comments which gave rise to the complaint were deleted by the subject member at some point prior to September 2022. Having consulted with the Independent Person, the Monitoring Officer then took the view that - although this outcome was not an optimal one - the deletion of the comments did provide sufficient basis for a decision that it would not be proportionate to pursue the matter to a formal investigation. A decision was made to decide to resolve the matter informally without taking any further action.
- 4.3 Complaints **M1/2021** and **N1/2021** concerned the social media comments by an elected member on behalf of their political group. That member responded to communications sent as part of this process, including an email letting them know that their conduct was considered to have potential to amount to a breach of the Code. Although they did not apologise for their conduct, they gave a clear account of the context in which they made the decision to respond in terms which gave rise to the complaints. That account provided a basis on which the Independent Person and the Monitoring Officer took the view that that complaint could be resolved by taking no further action on the basis that it would not be proportionate and necessary in the public interest to refer it for formal investigation.
- 4.4 The elected member who was the subject of complaint **A/2022** did not respond to communications regarding it. Having considered all of the facts, the Monitoring Officer and the Independent Person agreed that this was a matter which was sufficiently serious to merit referral for formal investigation. As a result, an investigator was appointed to carry out an investigation and a draft report has since been circulated to both parties. At time of writing, it is for the Monitoring Officer to determine next steps.
- 4.5 Paragraph 4.8 of the last update report referred to nine complaints received about a single elected member's conduct when discussing a key topic on social media, seven of which had already been determined by a decision to

take no further action. The member concerned did not respond to any communications about any of the complaints. Following a further attempt to engage them, a decision was made to refer complaint **E/2022**, as well as complaint **J/2022** for formal investigation. That process is at the same stage as complaint **A/2022** at time of writing.

- 4.6 Complaint **O/2022** has been determined by a decision to take no further action on the basis that the Monitoring Officer and the Independent Person were both in agreement that there was insufficient evidence to support the complaint. Complaints **C/2022** and **D/2022** concerned a different elected member and a separate complaint but were also determined by a decision to take no further action on the basis that the Independent Person and the Monitoring Officer were in accord that insufficient evidence of a breach had been identified. As with all of the complaints not proceeded with at preliminary assessment stage, the parties received an explanation of the rationale for this decision.
- 4.7 Complaints **P/2022** and **Q/2022** were also considered in a detailed way. In **P/2022**, detailed analysis of the newspaper article complained of was made alongside a process of reflecting on representations made by the subject member as well as the complainant. That complaint was ultimately determined by a decision by the Monitoring Officer, acting in accord with the Independent Person, that insufficient evidence of the alleged breach existed and that it was not considered to be in the public interest to progress the complaint. The member who was the subject of the complaint was however asked to take all possible care to ensure complete accuracy in relation to any public comments made about others in future.
- 4.8 **Q/2022** required a series of communications to be made by officers in order to establish the facts surrounding a dispute between neighbours. Whilst the member whose conduct was complained of did not provide a response to requests for clarificatory information during the latter part of the process, sufficient information was obtained to enable a decision by the Monitoring Officer - having consulted with the Independent Person - that the councillor was not acting in their capacity as a member during the conduct complained of. As a result, that complaint was also determined by a decision to take no further action.

## **5 Complaints received in since the last update to Committee**

- 5.1 Complaints **R/2022** and **S/2022** concerned the same subject member and asserted that their activities in their ward were such as to create a conflict of interest in a matter which came before them in their capacity as a committee member. However having considered the detailed comments made by the member, the Monitoring Officer agreed with the Independent Person's view that the evidence supplied did not establish any such conflict of interest and that as a result there was insufficient evidence to support the allegation of a breach of the Code. The complaint was therefore determined on that basis.
- 5.2 Complaint **T/2022** alleged that the terms used by an elected member when commenting publicly on a contested issue did not meet the Council's equalities standards and amounted to a breach of the Code. The Monitoring Officer however agreed with the Independent Person's assessment that – considering the conduct complained of, including the vocabulary used – there

was insufficient evidence of any breach. This complaint was therefore determined by a decision to take no further action on that basis.

- 5.3 Complaint **U/2022** alleged that a councillor who had made representations about a planning application had a conflict of interest. Having considered the complaint and the councillor's comments regarding her lack of a conflict, the view was taken that there was an absence of scope for such conflict on the facts provided and that therefore insufficient evidence of a breach existed to merit any action. The complaint was therefore determined on that basis.
- 5.4 Complaint **V/2022** was made against two members of the same group. It alleged that they had breached the Code when participating in a residents meeting by preventing consensus being reached to bring a deputation to Committee. Further complaint was made regarding the emails in which those members explained their actions to the complainant. The fact that both the members concerned had made efforts to communicate in a detailed way with the complainant was noted while no part of the complaint was considered to give rise to sufficient evidence that a breach had occurred. A decision was made to take no further action as a result.
- 5.5 Complaints **W/2022** and **X/2022** were from different complainants but concerned the same ward member. The complaint alleged that the member's responses to them on a ward matter had breached the Code. Both complaints remain with the Independent Person at time of writing and a decision has not as yet been made at preliminary assessment stage.
- 5.6 Complaint **Y/2022** made substantively the same allegation as was made in **U/2022** but purported to provide additional evidence in support. This is being reviewed at time of writing. Complaint **Z2022** was received in very shortly before publication of this Report and made allegations concerning a member's activities at and in relation to proposals in the member's ward. It remains at preliminary assessment stage and will be referred to in a future report, along with all other outstanding complaints.

## **6 Member development and training**

- 6.1 To assist the Committee in discharging its role in promoting and maintaining high standards of conduct by councillors, attention is drawn to the member training sessions taking place during the month of November 2022. These include a refresher session to enable members to recap on the Council's standards arrangements including the updates made in summer 2021.
- 6.2 Also occurring this month is the second of two training sessions delivered by an external trainer on the use of social media. It will highlight the challenges and opportunities for members who use social media and will offer some assistance on how to deal with those stakeholders who fail to meet minimal standards of courtesy and respect when approaching members.
- 6.3 A third training event has been run for members of the Audit and Standards Committee only. This provides them with an opportunity to undertake the training deemed mandatory for any member participating in a Standards Panel.

## **7 Analysis and consideration of 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 are key to discharging these requirements. No alternative proposals are suggested.

## **8 Community engagement and consultation**

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

## **9 Conclusion**

- 9.1 This Report aims to assist the Committee in discharging its responsibilities for overseeing the standards of conduct at this authority and for reviewing the arrangements in place for the resolution of member complaints.

## **10 Financial implications**

- 10.1 There are no additional financial implications arising from the recommendation in this report. All activity referred to has been, or will be, met from existing budgets.

Name of finance officer consulted: Nigel Manvell Date consulted 3/11/22

## **11 Legal implications**

- 11.1 These are covered in the body of the Report.

Name of lawyer consulted: Victoria Simpson Date consulted 31/10/22

## **12 Equalities implications**

- 12.1 No equalities implications have been identified.

## **13 Sustainability implications**

- 13.1 No sustainability implications have been identified.

## **14 Other Implications**

- 14.1 No other implications have been identified.

## **Supporting Documentation**

**None**

