

Subject: Annual report of the Standards Committee**Date of Meeting:** 18 March 2010
19 January 2010 – Standards Committee**Report of:** Director of Strategy & Governance**Contact Officer:** Name: Liz Woodley Tel: 291509
E-mail: liz.woodley@brighton-hove.gov.uk**Wards Affected:** All**FOR GENERAL RELEASE****1. SUMMARY AND POLICY CONTEXT:**

- 1.1 Section 3 of this report summarises the main ethical requirements of the Local Government Act 2000, and shows how the council has complied over the period of 14 months since the previous report of November 2008.
- 1.2 Section 3.13 of the report details the Monitoring Officer arrangements.
- 1.3 An overall assessment is given at 3.19.

2. RECOMMENDATIONS:

- 2.1 That the Committee reviews the period November 2008 to December 2009 and advises of any action it wishes to be taken.
- 2.2 That the Chair presents the report to Council.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**3.1 Membership, Work of & Reports to the Standards Committee**

3.1.1 **The** membership of the committee during this period has been as follows:-

- 3 Independent persons:- Ms M Carter, Mrs H Scott, Dr M B Wilkinson;
- 2 Rottingdean Parish Council representatives:- Parish Councillors Mr G Rhodes and Mr J C Janse van Vuuren;
[The 3 independent persons and Parish Council representatives are collectively described in this report as Independent Members]

- 2 Conservative Members:- Councillors Drake and Fallon-Khan until May 2009, and Councillors Drake and Mrs Theobald from May 2009;
- 1 Green Member: - Councillor Steedman;
- 2 Labour Members: - Councillors Lepper and Carden;
- 1 Liberal Democrat Member: - Councillor Watkins.

The Chairman throughout has been Dr. Wilkinson. There is no deputy chair, the Committee having determined at its meeting on 10 June 2008 that the position of Deputy Chair should remain vacant, with one of the independent Members deputising in the event of the Chairman being unavailable.

- 3.1.2 In the autumn of 2009, the Independent Members of the Standards Committee and the Monitoring Officer visited each of the Political Groups in the Council to discuss what, up to then, appeared a high number of complaints and possible ways to encourage better communication between the groups. The meetings were constructive and the comments received will be taken on board in developing the Council's approach to maintaining high standards of conduct.
- 3.1.3 There have been 4 meetings of the full Standards Committee since November 2008, including the meeting on 11 November. The following matters have been considered:-

11 November 2008

Received report on Member complaints and service complaints.
 Considered Annual report of the Standards Committee for the period September 2007 to September 2008
 Considered CLG consultation paper on revisions to the Members' code of conduct and the introduction of a model code for local authority employees.
 Approved revised assessment, investigation and determination procedures.
 Noted a report on the 7th Annual Assembly of Standards Committees held in Birmingham on 13 and 14 October 2008.

3 March 2009

Received report on Member complaints and service complaints.
 Received report on Audit of Members' Code of Conduct.
 Considered CLG consultation paper on the Code of Recommended Practice on Local Authority Publicity.
 Received oral interim report on Good Governance review.

17 June 2009

Received report on Member complaints and service complaints

8 September 2009

Received report on the Standards Committee (Further Provisions) (England) Regulations 2009.

Received report on Member complaints and service complaints.
Considered report on Members' Web Pages.

The meeting scheduled for 6 January 2009 was cancelled for want of business. Following the formal meeting on 17 June, Members stayed behind to consider the Annual Return to the Standards Board and to discuss the development of a work programme for the year 2009/10.

3.2 The Local Government and Public Involvement in Health Act 2007

3.2.1 The Local Government and Public Involvement in Health Act has had a major impact on the ethical standards regime. Since 8 May 2008, **all** allegations of breaches of the Code of Conduct about Brighton & Hove or Rottingdean Parish Members are referred to the Council's Standards Committee, not the Standards Board, which is now known as Standards for England. Officers need to bring each complaint before an Assessment Panel of 3 Members which has 4 options:-

- (i) To refer the matter to the Monitoring Officer for investigation, or
- (ii) To refer the matter to the Monitoring Officer for "other action"
- (iii) To refer the matter to the Standards Board, to deal with it under existing procedures; or
- (iv) To take no action.

3.2.2 An Assessment Review Panel can review a "no action" decision if the complainant so requests.

3.3 Sub-Committees of the Standards Committee

3.3.1 Since 8 May 2008, the Committee has had 3 Sub-Committees, known as the Assessment Panel, Assessment Review Panel and the Hearing Panel. Since the last annual report, the Assessment Panel has met on 10 occasions to consider complaints. In the same period the Assessment Review Panel met 4 times. The Hearing Panel also met 4 times to receive investigation reports. On three occasions, it resolved to accept the Investigation Officer's finding that there had been no breach of the Code. However, one case has been referred for a Determination hearing.

3.3.2 Details of the complaints and of the Panels' decisions with the names of the complainants and subject members withheld, are reported to the Committee as part of the regular Complaints update reports.

3.4 Undertakings to Comply with the Council's Code of Conduct

3.4.1 The requirement to sign a declaration indicating willingness to observe the Council's local Code of Conduct came into effect in 2002. By virtue of section 52 (3) of the Local Government Act 2000, it is unlawful for any Member (including the Independent Members as defined above

and any other co-optees with voting rights) to participate in the business of the Council without having signed the undertaking.

3.4.2 All Members of the Council have signed the declaration.

3.4.3 The Independent Members serving on the Standards Committee were appointed in February 2000 (Dr Wilkinson), August 2001 (Ms Carter) April 2002 (Mr Rhodes), October 2003 (Mrs Scott) and March 2008 (Mr Janse van Vuuren). All signed their undertakings before the first relevant meeting attended by them after their appointments.

3.5 **Register of Members' Interests**

3.5.1 The Monitoring Officer is required to maintain a register of Members' financial and other interests. In this context, the term Members includes Independent Members and co-optees with voting rights. Interests include gifts and hospitality over the value of £25, which Members have received in connection with their official duties. On a voluntary basis, membership of private clubs may also be disclosed.

3.5.2 The Code of Conduct requires Councillors to register interests within 28 days of the adoption of the code, 30 September 2007 or (if later) within 28 days of their election or appointment to office. This is done by providing written notification to the Council's Monitoring Officer.

3.5.3 There is an ongoing requirement to keep the information up to date. Councillors must within 28 days of becoming aware of any new registrable personal interest or change to any registered interest, give written notification to the Monitoring Officer.

3.5.4 Where Councillors consider that the information relating to any of their registrable personal interests is sensitive information, and the Council's Monitoring Officer agrees, they need not include that information when registering that interest, or, as the case may be, a change to that interest.

"Sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that the Councillor or a person who lives with him/her may be subjected to violence or intimidation.

3.5.5 All Members, (including Independent Members and co-optees with voting rights) made new declarations of interests in accordance with the requirements of the Council's newly adopted local Code of Conduct which came into effect on 30 September 2007. The registers are available for public inspection both online and in hard copy, although the online version only contains the home address of any Councillor where he/she has requested that it be included. The current hard copies of the public registers for Councillors are kept by Democratic Services in Room 120 King's House.

3.6 Applications for Dispensation

- 3.6.1 In limited circumstances, Members can apply in writing to the Standards Committee for dispensations to take part in business that they would otherwise have been unable to participate in through having prejudicial interests.
- 3.6.2 In the period between the last report in November 2008 to date, there have been no applications for dispensations.
- 3.6.3 All dispensations are entered on the register of Members' interests and remain there for the appropriate period, normally for 4 years from the date on which they were granted, or (if shorter) until the date fixed by the Committee granting the dispensation.

3.7 Politically Restricted Posts – Exemptions

Under the Local Government and Housing Act 1989 anyone who holds a “politically restricted post” in a local authority is unable to be a local Councillor, MP, MEP or Regional Assembly Member and must not take part in certain political activity, such as canvassing and serving as an officer of a political party. Restricted posts include the Chief Executive, Chief and Deputy Chief Officers, Monitoring Officers, those paid above a certain level and those who regularly brief the media on behalf of the authority. It is possible to claim exemption from the restrictions. This is done by applying to the Standards Committee. During the period covered by this report, there have been no applications for exemption.

3.8 Training

The Eighth Annual Assembly of Standards Committees took place in Birmingham on 13 and 14 October 2009. It was attended on behalf of Brighton & Hove City Council by the Chair, Councillor Mrs Theobald and an officer from the Standards and Complaints team. The Senior Lawyer also attended on behalf of the East Sussex Fire Authority.

3.9 Issues for the future

3.9.1 Codes of Conduct for local government employees

At its meeting on 11 November 2008 the Committee considered a CLG consultation paper on the introduction of a Code of Conduct for employees. The Committee were in favour of such a Code. There has been no formal response from CLG to the consultation.

3.9.2 Code of Conduct and private life

The 2002 national model Code of Conduct applied to Members when they were acting in their official capacity, although it did include some provisions which applied when they were acting in their private

capacity. In the Livingstone case, the High Court ruled that the Code of Conduct only applied when Members were acting in their official capacity as the legislation on which it was based did not enable it to have wider coverage. The Local Government and Public Involvement in Health Act 2007 gave the Secretary of State powers which could reverse the effect of the High Court decision. In October 2008, the Government issued a consultation paper, (Communities in Control: Real People, real power. Codes of conduct for Members and Employees) on possible revisions to the model code, principally to clarify its application to members' conduct in their non-official capacity. As yet, no new code has been issued, although it is understood that one will be published in early 2010 to be implemented after the May 2010 local government elections.

3.10 The Monitoring Officer Functions

General

3.10.1 The functions of the Monitoring Officer derive from section 5 of the Local Government and Housing Act 1989 and the Local Government Act 2000. These are supplemented by the Council's scheme of Delegation to Officers, various codes and protocols contained in part 9 of the Council's constitution, as well as custom and practice. Broadly, these roles can be described as covering legality, probity and good governance / administration. On 23 March 2003, it was agreed that the Monitoring Officer should submit an annual report to the Standards Committee on the performance of these functions and the adequacy of the arrangements.

Adequacy of Resources and Officer Arrangements

3.10.2 For the period November 2008 to February 2009, the Director of Strategy and Governance was the Council's Monitoring Officer. However, when he took up his role as Acting Chief Executive at the beginning of February, it was considered that the Chief Executive and Monitoring Officer roles should be split. Accordingly for the period February 2009 until the appointment of a new Chief Executive in early October 2009, the Head of Law was the council's Acting Monitoring Officer.

3.10.3 The council is obliged to provide the Monitoring Officer with the necessary resources to enable him to discharge his functions. The Head of Law has been appointed as council's Deputy Monitoring Officer. The Monitoring Officer is however supported by a number of lawyers (who attend Cabinet, Cabinet member meetings and committees and provide legal and probity advice) the Standards and Complaints Team (which deals with allegations of maladministration by any part of the Council and any ethical standards complaints about Members) as well as Democratic Services Officers. All these staff are in the same department – Strategy and Governance.

3.10.4 The Council's Internal Audit undertakes an audit of corporate governance from time to time and supports the Monitoring Officer by identifying any issues and suggesting steps for improvement. For example, in November 2008 Internal Audit undertook a review of Members' Code of Conduct interests.

3.10.5 These arrangements, taken together, provide the necessary expertise and resources for the effective discharge of the Monitoring Officer's functions.

3.11 The Member Structure for dealing with Standards

The ethical standards work in the Council is led and co-ordinated by the Standards Committee, consisting of the 11 Members listed at Section 3.1 of this report. The Council has been successful in attracting 5 high calibre Independent Members. One of these is the Chair of the Committee.

3.12 Procedures for dealing with local investigations and local determinations of ethical complaints

The Council has adopted procedures for the local assessment of complaints, the investigation of complaints and the determination of complaints.

3.13 Liaison and Joint Working with Other Statutory Officers

3.13.1 The Monitoring Officer is a Member of the Council's Corporate Management Team and has access to all documents and meetings of the Council relevant to his role. He reports directly to the Head of Paid Service (Chief Executive). He has regular meetings with the Chief Executive and with the Director of Finance & Resources who, as the financial monitoring officer has a similar monitoring role and powers in relation to financial matters. These arrangements have been effective in early identification of issues with advice being given or action being taken at the appropriate stage.

3.13.2 On matters of probity the Monitoring Officer works closely with the Director of Finance & Resources and the Head of Audit & Assurance. There are scheduled meetings with the District Auditor at which any issues of interest are discussed.

3.14 Arrangements for the Parish Council

The Monitoring Officer to the Council is also the Monitoring Officer for the Parish Council. The Legal and Democratic Services sections will continue to work on standards matters, as necessary, with the Chair, the Parish Clerk and the Parish Council representatives on the

Standards Committee. Democratic Services have set up regular meetings with the Clerk to the Parish Council.

3.15 Monitoring Officer reports

The Monitoring Officer in respect of legality and the Director of Finance & Resources in respect of finance, both have statutory powers to intervene in decision making and to issue formal reports to the full Council. Neither officer nor their predecessors has had to use their powers since the creation of the Council as a unitary authority in 1997.

3.16 Maladministration

3.16.1 The Monitoring Officer is supported in the investigation and resolution of allegations of maladministration by the Standards and Complaints team, under the Standards & Complaints Manager. The team also has responsibilities for ethical standards matters.

3.16.2 Performance and Equalities report regularly to the Standards Committee (through the Standards and Complaints Manager) and to the Council's Overview and Scrutiny Committees so that Members are aware of the issues which it is helping other departments to resolve and the advice it is giving them to help reduce future instances of maladministration or poor performance.

3.16.3 The Ombudsman received 148 enquiries and complaints about the Council in the 12 months ending 31 March 2009. He considered that the Council had had insufficient opportunity to respond to about a quarter of them and gave advice on another 28. 82 were referred for investigation.

3.16.4 The main subject areas were housing (homelessness, allocations, repairs and tenancy management), education (mostly school admissions), planning and building control (all of which were about the way the Council had dealt with applications for planning permission), and transport and highways (including parking).

3.16.5 13.8% (10) of cases were resolved by Local Settlement, as against the national figure of 27.4%. Local Settlement is where an investigation is discontinued because the authority agrees to take action which the Ombudsman considers to be satisfactory to resolve the complaint.

3.16.6 A further 16 cases were closed where the Ombudsman exercised his discretion not to pursue an investigation as there was no significant injustice to the complainant. 13 complaints fell outside his jurisdiction.

3.16.7 There were no findings of Maladministration and none of the complaints were dealt with by way of formal report finding Maladministration causing Injustice.

- 3.16.8 The Ombudsman reports that the members of the council's corporate complaints team are co-operative and professional when dealing with investigations.
- 3.16.9 The average time taken by the Council to reply to written enquiries was 28 days, which meets the Ombudsman's target response time and represents an improvement on last year's performance. The improvement is welcomed, although the Ombudsman expresses the hope that the Council will be able to maintain or improve on this!
- 3.16.10 The Council received 1788 Stage One corporate complaints in 2008/09, down 289 from the previous year. That reduction occurred as a result of falls in complaints about City Clean and Housing Benefits. Complaints about Transport and Highways, Revenues, Housing Management, Repairs and Maintenance, Housing Needs have remained broadly consistent. Complaints about Development Control have increased.

3.17 **Audit Commission**

- 3.17.1 Between October 2008 and March 2009 the Audit Commission undertook a review of governance in Brighton & Hove. The review was based on the Good Governance Standards for Public Services developed by the Independent Commission on Good Governance in Public Service. The overall conclusion of the report was positive.
- 3.17.2 Of particular relevance to the Standards Committee are the following conclusions:-

The protocols for dealing with issues of ethical standards, conduct and declarations of interest are in place and are generally effective. There is a well-established standards committee. The number of complaints upheld against Councillors is low. The monitoring officer and his team carry out their roles proactively and there is a good working relationship between the standards committee and the Council's legal team.

There is a well-established Standards Committee that includes three independent members from different professional backgrounds, one of whom is the chair and is highly experienced, well regarded and respected. Where there is a risk that a Councillor could breach the code of conduct, the Council uses informal processes initially to try to manage the issue. For example, the Chair of the Committee together with the Monitoring Officer takes an active approach to ensure that issues do not escalate and require formal intervention. The Committee's profile however could be raised, such as by actively promoting an understanding of the benefits of the ethical agenda inside the Council. This will help the Council to further improve the way inappropriate behaviour is dealt with. There is a clear understanding about the arrangements for the declaration of Councillors interests and the register of interests is readily available to the public.

3.18 Overall Assessment

- 3.18.1 The standards of conduct among Members, Co-opted Members and Officers of the Council remain high and no significant problems have been identified. Although 7 cases were referred to the Hearing Panel in the period covered by this report, as yet there have been no findings that a member has failed to observe the Council's Code of Conduct for Members.
- 3.18.2 There are no significant issues to be addressed in relation to complaints to the local Ombudsman.
- 3.18.3 All the audits undertaken by the Council internally as well as by external assessors regarding corporate governance are satisfactory overall.
- 3.18.4 The current Member and Officer arrangements to deal with conduct issues and support the role of the Monitoring Officer remain adequate.

4. CONSULTATION:

- 4.1 There has been no consultation.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

There are no direct financial implications arising from this report. Resources to support the activities described are met within the Strategy & Governance budget.

Finance Officer Consulted: Anne Silley

Date: 21 December 2009

5.2 Legal Implications:

These are addressed in the body of the report.

Lawyer Consulted: Liz Woodley

Date: 20 November 2009

5.3 Equalities Implications:

There are none.

5.4 Sustainability Implications:

There are none.

5.5 Crime & Disorder Implications:

There are none.

5.6 Risk and Opportunity Management Implications:

There are none.

5.7 Corporate / Citywide Implications

There are none.

SUPPORTING DOCUMENTATION

Appendices:

None.

Documents In Members' Rooms:

None.

Background Documents:

None.