

25 October 2012

Brighton &amp; Hove City Council

<b>Subject:</b>	<b>Complaints procedure</b>		
<b>Date of Meeting:</b>	<b>25 October 2012</b> 25 September 2012 – Audit & Standards Committee		
<b>Report of:</b>	<b>Monitoring Officer</b>		
<b>Contact Officer:</b>	Name: <b>Brian Foley</b>	Tel: <b>293109</b>	
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<b>Wards Affected:</b>	All		

**FOR GENERAL RELEASE****1. SUMMARY AND POLICY CONTEXT:**

- 1.1 The Localism Act 2011 has brought into effect fundamental changes to the regulation of Standards of Conduct for elected members. The Act requires the Council to adopt arrangements for dealing with complaints about a breach of the Code of Conduct by both Council and Parish Council Members. Those arrangements replace the previous process administered under the Standards Committee (England) Regulations 2008.
- 1.2 On 26 June 2012 Audit and Standards Committee approved a recommendation to refer to Council a revised and much simplified arrangement for dealing with complaints about member Conduct.
- 1.3 On 19 July 2012 Council approved the recommendation.
- 1.4 The purpose of this paper is to set out in greater detail the new arrangements for dealing with the investigation and hearing of complaints. The paper consists of a short covering report; the new procedures are set out in the Appendix.
- 1.5 The new arrangements provide a simplified process for dealing with complaints of misconduct and the actions which may be taken against a Member who is found to have failed to comply with the Code of Conduct.

**2. RECOMMENDATIONS:**

It is recommended that the Committee:

- 2.1 Adopt the arrangements for the investigation and hearing of complaints about Member conduct as set out in Appendix 1 and as illustrated in the flow chart in Appendix 2.

- 2.2 Report the adopted new arrangements to Council for information.
- 2.3 Instruct the Monitoring Officer to develop technical procedures for the investigation and hearing of complaints to be used in conjunction with the arrangements.
- 2.4 Instruct the Monitoring Officer to publicise the arrangements for the investigation and hearing of complaints by whatever means he considers appropriate.

### **3. RELEVANT BACKGROUND INFORMATION**

- 3.1 The proposed arrangements for dealing with complaints about member conduct are set out in Appendix 1. The overall approach is to set out the broad principles. Subject to Audit and Standards Committee agreeing the recommendations above, the Monitoring Officer will develop technical procedures for carrying out investigations and hearings.

### **4. FINANCIAL & OTHER IMPLICATIONS:**

#### Financial Implications:

- 4.1 The recommendations are expected to result in a minor reduction in the cost of Investigations and hearings. The simplified process should reduce the overall cost of administering each case referred for investigation which could have been the subject of four panel hearings and a third tier tribunal appeal.

*Finance Officer Consulted: Anne Silley Date: 24/08/12*

#### Legal Implications:

- 4.2 The council's duty to put in place arrangements for investigating and determining allegations that a member has failed to comply with the council's code of conduct is provided for in section 28(6) of the Localism Act 2011.

The Localism Act does not prescribe what the arrangements should consist of, except as follows:

(i) the views of the Independent Person must be sought and taken into account before it determines an allegation it has investigated (section 28(7)); and

(ii) where the council finds that a member has failed to comply with the code, it may have regard to the failure in deciding whether to take action in respect of the member, and what action to take (section 28(11),

These requirements are included in the Arrangements proposed in Appendix 1.

*Lawyer Consulted: Oliver Dixon Date: 30 August 2012*

Equalities Implications:

- 4.3 There are no Equalities implications

Sustainability Implications:

- 4.4 There are no Sustainability implications

Crime & Disorder Implications:

- 4.5 There are no Crime and Disorder implications

Risk and Opportunity Management Implications:

- 4.6 There are no Risk and Opportunity Management implications.

Corporate / Citywide Implications:

- 4.7 The new arrangements provide the opportunity to be transparent about the conduct of our members and therefore help to enhance reputation for honesty and openness.

**SUPPORTING DOCUMENTATION**

**Appendices:**

1. Arrangements for the Investigation and Hearing of Complaints
2. Flow chart describing the Investigation and Hearing of Complaints

**Documents In Members' Rooms**

1. None

**Background Documents**

1. The Localism Act 2011, Part 1, Chapter 7

# Appendix 1

## Brighton & Hove City Council and Rottingdean Parish Council arrangements for dealing with allegations of breaches of the Members' Code of Conduct under the Localism Act 2011

### **1 Context**

These "Arrangements" set out how a person may make a complaint that an elected or co-opted Member of Brighton & Hove City Council (the 'City Council') or Rottingdean Parish Council (the 'Parish Council') has failed to comply with that authority's Code of Conduct, and sets out how the City Council will deal with allegations of a failure to comply with either authority's Code of Conduct.

### **2 The Code of Conduct**

The City Council and Parish Council have each adopted a Code of Conduct for its respective Members which is available for inspection on each authority's website and on request from Reception at Brighton Town Hall, or from the Standards and Complaints Team

### **3 Making a complaint**

If a person wishes to make a complaint, they should write to

The Monitoring Officer  
c/o Standards and Complaints  
Brighton & Hove City Council  
Grand Avenue  
Hove  
BN3 2LS

Or email

[Complaints@brighton-hove.gov.uk](mailto:Complaints@brighton-hove.gov.uk)

Or use our web form

[www.brighton-hove.gov.uk/complaints](http://www.brighton-hove.gov.uk/complaints)

The Monitoring Officer is a senior officer of the City Council who has statutory responsibility for maintaining the register of Members' interests and who is responsible for administering the system in respect of complaints of Member misconduct.

To ensure that we have all the information which we need to be able to process a complaint, the complainant is asked to provide us with their name and a contact address or email address, so that we can acknowledge receipt of the complaint and keep them informed of its progress. If a person wants to keep their name and address confidential, they are asked to explain their reasons in the space provided on the complaint form. The City Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

We will acknowledge receipt of the complaint as soon as possible and within a maximum of 5 working days of receiving it, and will keep the person informed of the progress of their complaint.

The Member against whom the complaint is directed will be notified that a complaint has been received as soon as possible and within a maximum of 5 working days of receiving it unless the Monitoring Officer considers that doing so may prejudice any investigation into the complaint.

The Council aims to complete the complaint process within a maximum of three months from receipt of the complaint.

#### **4 Will the complaint be investigated?**

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 10 working days of receipt of the complaint. The Monitoring Officer will then inform the complainant and the Member of his decision and the reason for that decision.

Where the Monitoring Officer requires more information to help him reach a decision, he may ask for additional comments from the complainant and may request information from the Member against whom the complaint has been made.

The Monitoring Officer may decide a complaint does not merit investigation if:

- It is about someone who is no longer a member of the Council.
- The complaint if proven could not amount to a breach of the code.
- The complaint is vexatious or frivolous
- It would not be in the public interest to do so, which could for example include cases where:
  - There has been a long delay before the complaint was made.

- The complaint appears to be minor, politically motivated, malicious or not sufficiently serious to warrant further action.

This list is not intended to be exhaustive and the Monitoring Officer may decide that a complaint does not merit formal investigation for any other reason which appears to him/her to be relevant.

The Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. An informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or some other action on their part. Where the Member makes a reasonable offer of 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.

The Monitoring Officer has the discretion to refer the decision as to whether a complaint merits an investigation to the Standards Panel if it appears appropriate to do so.

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 or and appropriate regulatory body as well as or in lieu of an investigation by the City Council.

## **5 How is the investigation conducted?**

If the Monitoring Officer decides that a complaint merits formal investigation, he will appoint an Investigating Officer, who may be another senior officer of the City Council, an officer of another local authority or an external investigator. The Investigating Officer will have discretion as to how the investigation is carried out.

The Investigating Officer would normally ask the complainant and the Member to provide their explanation of events, and will identify what documents he/she needs to see and who 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.

The Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the Member concerned, to give both an opportunity to identify any matter in that draft report which requires more consideration.

Having received and taken account of any comments on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

Copies of the final report will be sent to the complainant and the member concerned.

## **6 What happens after the Monitoring Officer has received the Investigating Officer's report.**

The Monitoring Officer will send the matter for a hearing before the Standards Panel.

### **Hearing**

The Monitoring Officer will refer the Investigating Officer's report to the Standards Panel which will conduct a hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Monitoring Officer will require the Member to give his/her response to the Investigating Officer's report, to identify what is likely to be agreed and what is likely to be in contention at the hearing. The Chair of the Standards Panel (after consulting with the Monitoring Officer) may issue directions as to the manner in which the hearing will be conducted.

The Standards Panel may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint.

If the Standards Panel concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Standards Panel will then consider what action, if any, the Standards Panel should take as a result of the member's failure. In doing this, the Standards Panel will give the member an opportunity to make representations to the Panel, but will then decide what action, if any, to take in respect of the matter.

## **7 What action can the Standards Panel take where a member has failed to comply with the Code of Conduct?**

7.1 The actions the Standards Panel may take in relation to a member of the City Council who has failed to comply with its code of conduct include –

- (i) Publishing its findings in respect of the member's conduct;
- (ii) Writing a formal letter to the councillor found to have breached the code;
- (iii) Reporting its findings to Council for information;
- (iv) Formal censure;

- (v) Recommending to the member's Group Leader that he/she be removed from any or all committees or sub-committees of the Council;
- (vi) Recommending the Monitoring Officer to offer appropriate training.

7.2 Where the Standards Panel finds that a member of the Parish Council has failed to comply with its code of conduct, the Standards Panel may make a recommendation to the Parish Council as to whether to take action in relation to the member, and what action to take. However, the actual decision as to whether to take action against the member, and what action to take, rests with the Parish Council.

Should the Parish Council decide to take action against a member who has failed to comply with its code, the actions available to them include those listed in 7.1 above except for items (iii) and (v).

7.3 The Standards Panel has no power to suspend or disqualify the Member or to withdraw members' basic or special responsibility allowances.

## **8 What happens at the end of the hearing?**

At the end of the hearing, 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 (or recommends that the Parish Council take in relation to a Parish Council member).

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.

## **9 Who are the Standards Panel?**

The Standards Panel is a Sub-Committee of the Council's Audit and Standards Committee. Membership will consist of one elected Member from each of the Political Groups represented on the Council, and an Independent Person who will attend the meeting in their statutory advisory capacity. Its membership will be drawn from Audit and Standards Committee and will be based on member availability. The Panel will elect one of its members to act as Chair.

The Independent Person is invited to attend all meetings of the Standards Panel and his or her views are sought and taken into consideration before the Standards Panel takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct.



## **10 Who is the Independent Person?**

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and has been appointed by a positive vote from a majority of all the members of Council. The statutory role of the Independent Person is set out in section 28(7) of the Localism Act.

## **11 Revision of these arrangements**

The Audit and Standards Committee may by resolution agree to amend these arrangements, and has delegated to the Monitoring Officer the right to depart from these arrangements where he considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

## **12 Appeals**

There is a right of appeal for the complainant and for the member against a decision of the Standards Panel. This is without prejudice to the right of the complainant to refer the matter to the Local Government Ombudsman.

The complainant or member should write to the Monitoring Officer, stating they wish to appeal the Standards Panel decision, giving their reasons for doing so. A request for an Appeal must be received within 10 working days of the original Hearing.

A Standards Panel composed of different members to the one that heard the original case will consider the case. The Panel may dismiss or uphold the appeal. If they uphold the appeal they may substitute the original decision with a new decision on the proviso that the complaint was properly investigated. If the Panel considers that essential information was not included in the investigation they may refer the complaint back to the investigation stage.

## Appendix 2 - Standards Complaints Procedure

