



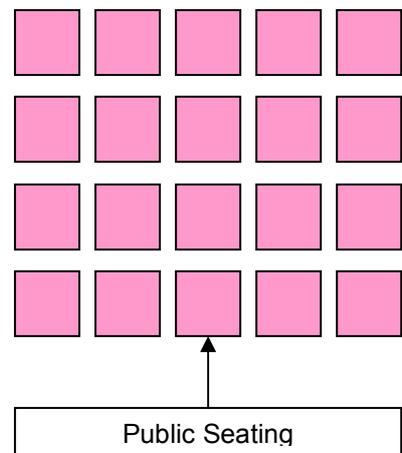
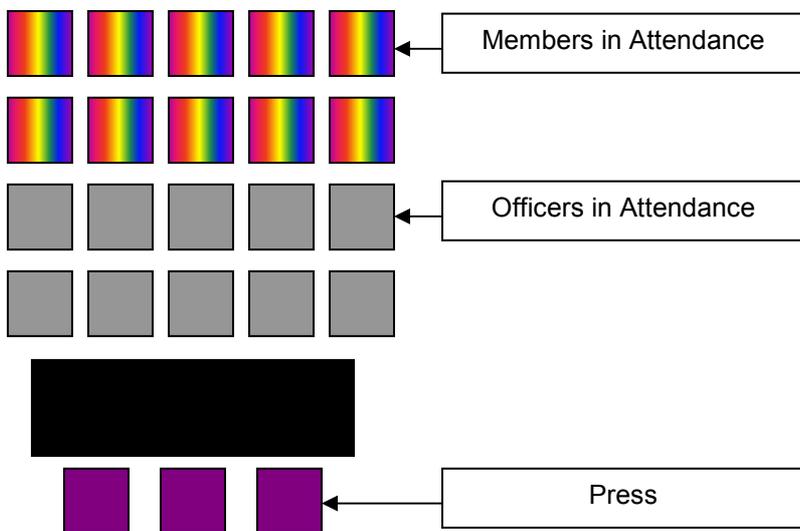
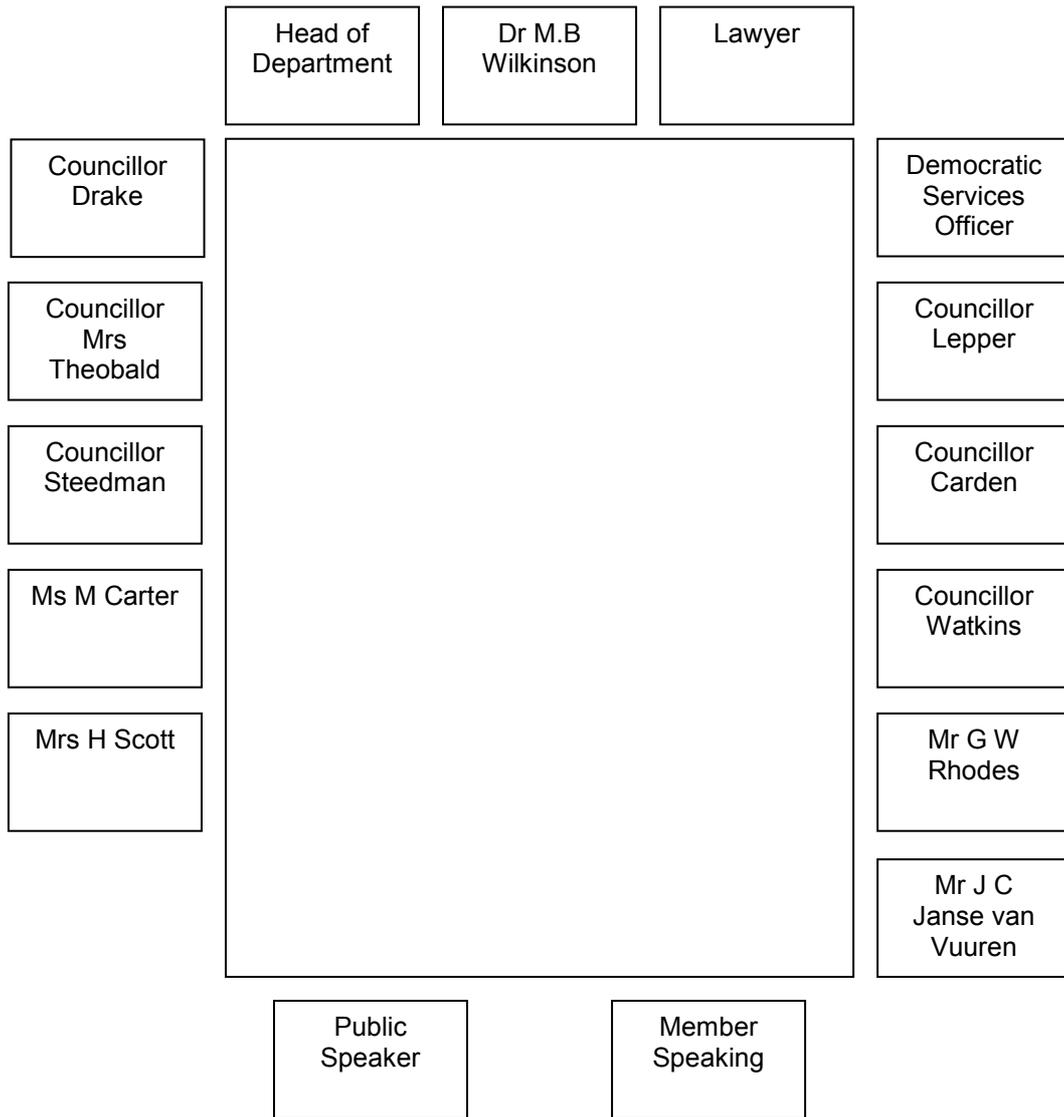
**Brighton & Hove
City Council**

Standards Committee

Title:	Standards Committee
Date:	19 January 2010
Time:	5.00pm
Venue	Committee Room 1, Hove Town Hall
Members:	<p>Councillors: Carden, Drake, Lepper, Steedman, C Theobald and Watkins</p> <p>Independent Members: Dr M Wilkinson (Chairman), Ms M Carter and Mrs H Scott</p> <p>Rottingdean Parish Council Representatives: Mr J C Janse van Vuuren and Mr G W Rhodes</p>
Contact:	<p>Jane Clarke Democratic Services Officer 01273 291064 jane.clarke@brighton-hove.gov.uk</p>

	The Town Hall has facilities for wheelchair users, including lifts and toilets
	An Induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter and infra red hearing aids are available for use during the meeting. If you require any further information or assistance, please contact the receptionist on arrival.
	<p>FIRE / EMERGENCY EVACUATION PROCEDURE</p> <p>If the fire alarm sounds continuously, or if you are instructed to do so, you must leave the building by the nearest available exit. You will be directed to the nearest exit by council staff. It is vital that you follow their instructions:</p> <ul style="list-style-type: none"> • You should proceed calmly; do not run and do not use the lifts; • Do not stop to collect personal belongings; • Once you are outside, please do not wait immediately next to the building, but move some distance away and await further instructions; and • Do not re-enter the building until told that it is safe to do so.

Democratic Services: Meeting Layout



AGENDA

13. PROCEDURAL BUSINESS

- (a) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (b) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

NOTE: Any item appearing in Part 2 of the Agenda states in its heading the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls.

14. MINUTES OF THE PREVIOUS MEETING

1 - 6

Minutes of the meeting held on 8 September 2009 (copy attached).

15. CHAIRMAN'S COMMUNICATIONS

16. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on Tuesday 12 January 2010).

No public questions received by date of publication.

17. ANNUAL REPORT OF THE STANDARDS COMMITTEE

7 - 18

Report of the Director of Strategy & Governance (copy attached).

Contact Officer: Liz Woodley Tel: 29-1509

Ward Affected: All Wards

18. GUIDANCE OF CONFIDENTIALITY

19 - 32

Report of the Director of Strategy & Governance (copy attached).

Contact Officer: Abraham Ghebre- Tel: 29-1500

Ghiorghis

Ward Affected: All Wards

19. REVISED MEMBERS WEB POLICY

33 - 48

Report of the Director of Strategy & Governance (copy attached).

Contact Officer: Caroline Banfield, Tel: 29-1126, Tel: 29-
Abraham Ghebre-1500
Ghiorghis

Ward Affected: All Wards

20. COMPLAINTS UPDATE

49 - 60

Report of the Monitoring Officer (copy attached).

Contact Officer: Brian Foley Tel: 29-1229
Ward Affected: All Wards

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

Agendas and minutes are published on the council's website www.brighton-hove.gov.uk. Agendas are available to view five working days prior to the meeting date.

Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Jane Clarke, (01273 291064, email jane.clarke@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

Date of Publication - Monday, 11 January 2010

BRIGHTON & HOVE CITY COUNCIL**STANDARDS COMMITTEE****5.00pm 8 SEPTEMBER 2009****COMMITTEE ROOM 3, HOVE TOWN HALL****MINUTES****Present:** Councillors: Carden, Drake, Steedman and Watkins**Independent Members:** Dr M Wilkinson (Chairman), Mrs H Scott**Rottingdean Parish Council Representatives:** Mr J C Janse van Vuuren and Mr G W Rhodes**Apologies:** Councillor Jeane Lepper and Councillor Carol Theobald**PART ONE****6. PROCEDURAL BUSINESS****6a Declarations of Interest**

6.1 There were none.

6b Exclusion of the Press and Public

6.2 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Standards Committee considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I(1) of the Act).

6.3 **RESOLVED** – That the press and public be not excluded.**7. MINUTES OF THE PREVIOUS MEETING**7.1 **RESOLVED** – That the minutes of the meeting held on 17 June 2009 be signed by the Chairman as a correct record.

8. CHAIRMAN'S COMMUNICATIONS

- 8.1 The Chairman stated that following on from the recommendations that arose from the recent future planning session, meetings between the independent Members and each political group had been organised and were to begin that evening.

The Chairman paid tribute to Mr Brian Rowe, who had previously been a Councillor of Brighton & Hove City Council, and had sadly passed away. He noted that Mr Rowe had been the first opposition spokesperson to sit on the newly formed Standards Committee and had done a great deal to ensure the political neutrality of the Committee. The Chairman recognised the support and wisdom he had received from Mr Rowe during the formative meetings of the Standards Committee. Councillor Watkins and Councillor Carden joined in the tribute and felt that Mr Rowe had earned respect from all parties. He would be greatly missed.

9. PUBLIC QUESTIONS

- 9.1 There were none.

10. STANDARDS COMMITTEE (FURTHER PROVISIONS) (ENGLAND) REGULATIONS 2009

- 10.1 The Committee considered a report from the Monitoring Officer regarding the Standards Committee (Further Provisions) (England) Regulations 2009 (for copy see minute book).
- 10.2 The Senior Lawyer summarised the report and highlighted that there were two notable changes to the regulations. The first was that the Standards Board for England (SBE) could now suspend the initial assessment functions of local authorities. There was currently no guidance as to when this might occur, but it was intended as a 'last resort' option, and only after attempts to improve the processes of the authority in question had failed.

She stated that the SBE had to give notice of their intention to do this, and there was an opportunity for the local authority to argue against the suspension. Once assessment functions had been suspended however, the SBE could take over the initial assessment of complaints themselves, or request another authority to take on this role.

The second element of the changes related to the provisions for joint Standards Committees. The Senior Lawyer stated that it was the Governments' view that joint Committees would be more efficient and the imposition of sanctions more effective when organised jointly. She felt that, for logistical reasons, any joint Committee would ideally take place with authorities in the area, but noted that there was not currently a desire within the local area to investigate this option.

Lastly, the regulations clarified the rules relating to dispensations, although the Senior Lawyer felt the changes were fairly academic and in practice dispensations would continue to operate in the same way.

10.3 Councillor Watkins asked if the joint Standards Committee arrangements would be on a permanent or ad-hoc basis. He believed there were instances where a joint Committee could be beneficial, especially in relation to services that the provided jointly by different authorities. The Senior Lawyer stated that once it was set up, the joint Committee would remain in place, but authorities had to make provisions for withdrawal from the arrangements at any stage.

10.4 **RESOLVED** – That the Standards Committee notes the report.

11. STANDARDS COMPLAINTS UPDATE

11.1 The Committee considered a report from the Monitoring Officer regarding the Standards Complaints Update (for copy see minute book).

11.2 The Standards and Complaints Manager summarised the report and highlighted the complaints against Members that had been resolved and the ones still to be heard. He noted that of the complaints that had been resolved, a recommendation had been expressed by Panel Members as part of the decision, and this was dealt with in the following report on Members' Web Pages. He stated that there were still four reports outstanding on Members complaints; one report was complete and was due to be heard imminently, two complaints were being investigated and it was anticipated that the reports would be complete by the end of September 2009, the fourth complaint had been referred for investigation with the last week.

11.3 Ms Scott noted that on some of the complaints, the time that had elapsed from the initial complaint to its conclusion was lengthy. The Standards and Complaints Manager agreed and recognised that this was not desirable. He apologised for the length of time some of the complaints had taken to reach a conclusion but felt that the nature and complexity of some of the complaints, which had all been received around the same time frame, had necessitated this. The Monitoring Officer also agreed that the length of time was unsatisfactory and stated that more resources had been put in to deal with this. Councillor Watkins felt there was a need to be cautious as he did not want investigations to be rushed simply to meet an artificial time limit. The Standards and Complaints Manager agreed and stated that all investigations would be completed as thoroughly as necessary.

11.4 The Standards and Complaints Manager went on to say that Local Government Ombudsmen complaints were very low for the current year, as were internal stage two complaints.

11.5 **RESOLVED** – That the content of the report is noted.

12. MEMBERS' WEB PAGES

12.1 The Committee considered a report from the Director of Strategy and Governance regarding Members' Web Pages (for copy see minute book).

12.2 The Monitoring Officer summarised the report and highlighted that changes had been made to the Members' Web Pages Policy as a result of a Standards Panel recommendation following assessment of a complaint.

- 12.3 The main changes related to the rules regarding external links on the Members' blog pages, and the rules relating to publicity of political events. The Monitoring Officer stated that some Local Authorities had decided to ban links altogether from their website, whilst others had no adopted policy. He felt the revised policy of Brighton & Hove City Council was between these two positions, and now allowed links but subject to certain restrictions. Further changes were that personal blogs must now include a disclaimer stating that Brighton & Hove City Council could not take responsibility for the content of webpages that were external to its site. Once the policy was adopted this would be mandatory, and failure to include this disclaimer would constitute a breach of the Code of Conduct.

The second change related to publicity of political events on the Council's website. The Monitoring Officer stated that reference to an event was substantially different to promotion or publicity of an event. It was important to recognise that the City Council received political visitors in an official capacity on a regular basis, and reference to such an event, where it concerned one of the functions of the local authority, should not constitute a breach of the Code of Conduct.

If reference to such an event was made by a Member author who then went on to promote the event or share opinions on it, then this would constitute a breach of the Policy and therefore the Code.

The Monitoring Officer added that there were two interpretations of 'functions' of the Council. The first interpretation was the narrow, traditional interpretation of the services the Council provided. The second interpretation related to wider Council functions under the wellbeing powers. This would include a much broader scope of events that could be referred to without consequence, and the Monitoring Officer felt it was important to include this aspect in the Policy.

- 12.4 Councillor Steedman felt that the amended policy was a sensible approach to take to the issue. He believed that most Councillors who chose to blog would not use the Council website anyway, and as they were naturally political in nature when expressing opinions they would want to express themselves more freely than the Council's website would allow. He believed it was right that they were able to do this without undue censure, and links from the Council website to such forums should be allowed.
- 12.5 Councillor Watkins was unhappy with the amendment at 9.4 of the policy as he did not believe the Council's website should contain any references of a political nature and that a strict interpretation of this should be applied to ensure there was no political content supported by the Council. The Monitoring Officer stated that the policy at 9.4 was dependent on the fulfilment of the requirements at 9.1 and 9.2. The amendment was not intended to allow Members to affect support for a political party, but he added that references to factual events could not be a breach of the Code. He understood Councillor Watkins' concerns but felt that 9.1 and 9.2 was adequate in ensuring this would not happen.
- 12.6 Councillor Steedman noted that thought needed to be given to providing guidance to Councillors who used private blogs and the Monitoring Officer agreed. He stated that just because blogs were personal did not mean they were free from the restrictions of

the Code of Conduct. The Chairman felt that this would increasingly become an issue in the future and proposed to raise this at the impending Standards Conference.

- 12.7 Councillor Janse Van Vuuren felt that Councillors needed to be directed more firmly to Officers for advice when they were unsure about the content of a webpage, especially as once it was published onto the internet it was very difficult to withdraw. Ms Scott agreed and felt that paragraph 7 of the revised policy should be highlighted to Members accordingly.
- 12.8 Councillor Watkins felt the changes and implications of the policy were important and requested that a session on this was included in any blog writing training that Members received from the Council.
- 12.9 **RESOLVED** – That:
1. The Standards Committee notes and approves the content of the revised Members' Web Pages Policy, subject to the approval of the Governance Committee.
 2. That the revised policy is referred to the Governance Committee for approval.

The meeting concluded at 5.45pm

Signed

Chairman

Dated this

day of

Subject: *Annual report of the Standards Committee***Date of Meeting:** **19 January 2010****Report of:** *Director of Strategy & Governance***Contact Officer:** Name: Liz Woodley Tel: 291509E-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.

Subject: *Guidance to Members on Confidential Information*
Date of Meeting: **19 January 2010**
Report of: *Director of Strategy & Governance*
Contact Officer: Name: Abraham Ghebre-Ghiorghis Tel: 29-1500
E-mail: abraham.ghebre-ghiorghis@brighton-hove.gov.uk
Wards Affected: All

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

- 1.1 In September 2007, guidance on confidential information was issued to Members and Officers outlining the legal position and to reflect the revised Code of Conduct for Members. The Guidance is attached as Appendix 1.
- 1.2 This report seeks to update the guidance to take account of some recent decisions of the Adjudication Panel for England. It was considered by the Governance Committee on 17 November and the extracts from its proceedings are attached as Appendix 2.

2. RECOMMENDATIONS:

- 2.1 That Members note the principles summarised in paragraph 3.3 and approve the revised guidance incorporating those points as indicated in the document in Appendix 1.
- 2.3 That a copy of the revised guidance be circulated to all Members following approval by the Committee.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 A combination of national legislation and the Council's policies mean that there is always a presumption in favour of openness and transparency. However, there are circumstances when the business interests of the council (and ultimately the public) or the protection of individuals requires that the confidentiality of some information is respected. This is recognised in law and the Code of Conduct for Members imposes a duty not to disclose confidential information.
- 3.2 In 2007, guidance was issued to Members outlining the legal position and making some practical suggestions (attached as Appendix 1.) Although the overall level of compliance with the duty of confidentiality among Members and Officers in the Council remains high, there have been some instances

where information of a confidential nature was disclosed without authority. Some of these include information relating to the Waste PFI contract, terms of retirement of some officers and matters relating to industrial relations. In most cases, it is not possible to ascertain how confidential information is disclosed without authority but the Council will continue to remind Members and Officers of their obligations under the law and relevant Codes of Conduct.

3.3 The Adjudication Panel for England in recent years heard two cases: a North Dorset case involving a planning matter and a West Somerset case involving the disclosure of terms of retirement of the Chief Executive. The principles emerging from these cases are:

- (1) The fact that information given in confidence has been improperly made public does not mean that it loses its confidential nature and can thereafter be recited in public with impunity. It is a breach of the code to disclose information of a confidential nature however it is acquired;
- (2) There is a public interest in Councils being able to rely on confidential information remaining so where the proper process has been followed. This would for example be the case where Members unanimously resolve that an item should remain exempt from disclosure;
- (3) The legitimate expectations of third parties about the information being kept confidential are an important relevant factor when considering whether the disclosure is reasonable;
- (4) In looking at whether disclosure is reasonable and in the public interest for the purposes of the code of conduct for Members, one has to take account of the Human Rights Act. In particular, article 10 (right to freedom of expression) and article 8 (right to respect for private and family life, home and correspondence.) Any interference with the public interest in disclosure has to be balanced against the interference with the right of the individual to respect for their private life. Neither article 8 nor article 10 has any pre-eminence over the other.

3.4 Although the above principles may be implicitly recognised in the current guidance, it would be useful to have them referred to in the section on Members' duty of confidentiality and the "public interest" exemption. A revised draft with the suggested amendments in bold and underlined is attached in Appendix 1. It is proposed that, subject to Members' agreement the revised draft incorporating these principles is circulated to Members.

3.5 The proposals in this report were considered by the Governance Committee on 17 November. The Committee supported the proposed changes. Extracts from the proceedings of the Committee are attached as Appendix 2.

4. CONSULTATION:

- 4.1 The proposals in the report are simply updating the current guidance to reflect case Tribunal decisions. There has therefore not been any prior consultation with Members.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

There are no financial implications arising from this report.

5.2 Legal Implications:

These are incorporated in the body of the report and the guidance itself.

Lawyer consulted: Abraham Ghebre-Ghiorghis Date: 05/11/09

5.3 Equalities Implications:

There are no equalities implications directly arising from this report.

5.4 Sustainability Implications:

There are no sustainability implications arising from the report.

5.5 Crime & Disorder Implications:

In some cases the disclosure of confidential information or the obstruction of access to information may constitute an offence. The guidance will contribute to minimising such risks.

5.6 Risk and Opportunity Management Implications:

None.

5.7 Corporate / Citywide Implications:

The proposals will contribute towards continuous development and improvement of our governance arrangements and higher ethical standards reflecting the Council's priority regarding Leadership.

SUPPORTING DOCUMENTATION

Appendices:

1. Guidance regarding Confidential Information.

Documents In Members' Rooms:

None.

Background Documents:

None.

Guidance to Members and officers regarding confidential information

1 Introduction

1.1 The Council is committed to the principles of openness and transparency in decision making. However, in the practical application of these principles, the Council needs to have regard to legal obligations, which, in some cases, may require information to be kept confidential. One issue that Members and officers come across from time to time is the rights and obligations of Members regarding confidential information and the circumstances when such information may be disclosed. This note is intended as a general guidance to assist Members and Officers in dealing with such issues and covers the following topics:

- What is “confidential information”;
- Member’s rights to access information;
- Members’ duty of confidentiality;
- The position regarding officers; and
- Some “do’s and don’ts”.

2 What is confidential information

2.1 There is no legal definition of “confidential information” that is of general application. The confidentiality or otherwise of information therefore needs to be considered in the context of individual circumstances. However, by way of general indicative guidance, the following categories of information would normally be treated as confidential.

- (a) All reports that are in part II of Council or committee agendas (pink papers).
- (b) Matters concerning details of commercial negotiations.
- (c) Where there is a legal restriction on the disclosure of information (for example under the Data Protection Act, contractual obligations, a court order or pending legal proceedings covered with the sub judice rule).
- (d) Where information is supplied to a Member by an officer or other person and is stated to be confidential.
- (e) Matters concerning terms and conditions of employment of individual officers or pending grievance or disciplinary proceedings.
- (f) Personal information concerning individual service recipients (for example child protection cases, benefits investigations etc).

(g) Information which, given its nature, timing and context is such that a reasonable person would consider it to be confidential. The disclosure of such information would normally tend to have a detrimental effect on the interests of the Council, the service users or third parties involved.

2.2 Some information which would otherwise be confidential may nevertheless be subject to public rights of access under the law. This, for example, would cover subject access under the Data Protection Act 1998, a specific request for access under the Freedom of Information Act 2000, access to accounts and records under the Audit Commission Act 1998 as well as access to meetings and documents under the Local Government Act 1972. Such rights may be general or limited to a “qualifying” individual. Some rights of access to information also have procedural requirements attached to them (such as the need to submit the request in writing.) It is therefore generally advisable for such requests to be forwarded to the relevant officer, even where the Member may have the information at his/her disposal.

3 Members’ rights to access confidential information

3.1 The Council has a general commitment to openness and transparency. Members’ access to information and documents should therefore be restricted only where there is a good reason for doing so.

3.2 So far as the legal position is concerned, Members do not have unrestricted rights of access to all information. They have a common law right to access information on a “need to know” basis. This entitles them to access information or documents that are reasonably necessary to enable them to discharge their functions as Members of the Council. This would cover their roles as Cabinet Members, members of committees, subcommittees or working groups as well as positions to which they are appointed by the Council as Members and their community Councillor roles. The right is limited to a need to know and a mere curiosity or desire to know is not sufficient. The courts have also held that there is no right to a “roving commission” to examine the books or documents of the Council.

3.3 An officer receiving a request is entitled to know the reasons why the information is needed so that a proper assessment of the need to know can be made. Where a Member is dissatisfied with the decision, the matter may be referred to the Monitoring officer, who is authorised to make a final decision under the Code of Conduct for Member/Officer relations.

3.4 In addition to the Common Law rights mentioned under 3.3 above, Members have the same rights as ordinary members of the public, including those mentioned in paragraph 2.2 above.

3.5 The Council has developed a protocol for access to information as part of the Council's constitution. A copy of this is attached as an annex to this note.

4 Members' duty of confidentiality

4.1 The Local Code of Conduct for Members provides under paragraph 4:

"You must not ---

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where---

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third part agrees not to disclose the information to any other person; or
- (iv) the disclosure is ---

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law."

4.2 The duty of confidentiality under the code applies only when a Member is acting in an "official" capacity. The information must therefore have been received and/or disclosed by the Member as a Councillor and not in a private capacity unconnected with the role of the Councillor. Subject to that, the duty is not limited to information supplied by officers or the Council; it covers information given to a Member by **any** person in his/her capacity as a Councillor.

4.3 The code does not define what is confidential. However, what is clear is that it is not necessary for the person who supplied the information to have stated expressly that the information is confidential. For example, the fact that correspondence is not marked "confidential" does not necessarily stop it from being confidential. In many cases the fact that the information is confidential may be inferred from the subject matter and the surrounding circumstances. If you believe or "ought reasonably to be aware of" the confidential nature of the information, the duty under the code applies. You may wish to consider the guidance under paragraph 2 of this note to help you form a view regarding confidentiality.

- 4.4** The fact that information given in confidence has been improperly made public does not mean that it loses its confidential nature and can thereafter be recited in public with impunity. It is a breach of the code to disclose information of a confidential nature however it is acquired.
- 4.5** There is a public interest in Councils being able to rely on confidential information remaining so where the proper process has been followed. This would for example be the case where Members unanimously resolve that an item should remain exempt from disclosure.
- 4.6** **Disclosure with consent:** The Code of Conduct refers to “the consent of the person authorised to give it” as a potential justification for the disclosure of confidential information. This would normally be the author of the document or the Director or a senior officer of the department for the area of service. Alternatively, consent may be obtained from the Chief Executive. In appropriate cases, the officer may need to consult the chairman of the relevant committee or sub-committee before giving consent.
- 4.7** **Disclosure required by law:** Disclosure may be required by law for example in connection with legal proceedings or the Data Protection Act or the subject Access provisions of the Data Protection Act. In such cases the obligations to disclose overrides the duty of confidentiality.
- 4.8** **Disclosure for the purpose of obtaining advice:** You can disclose confidential information if the disclosure is for the purpose of enabling you to obtain professional advice, such as legal advice from a solicitor. However, your need to make sure that he/she agrees not to disclose the information to a third parties.

5 Is there “a public interest” defence?

- 5.1** Paragraph 4 (iv) of the new code permits Members to disclose information “in the public interest.” However, the provision is much more restricted than may appear at first sight. It is subject to four conditions. These are that the disclosure:
- (1) must be reasonable;
 - (2) must be in the public interest;
 - (3) must be made in good faith; and
 - (4) must be made in compliance with any reasonable requirements of the council.

A. Reasonableness: the first condition (reasonableness) requires consideration of matters such as:

- Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.
- Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
- The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.
- The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
- The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
- The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to re-occur.
- Whether the disclosure involves your authority failing in a duty of confidence owed to another person.
- **The legitimate expectations of third parties about the information being kept confidential are an important relevant factor when considering whether the disclosure is reasonable.**

B. Public Interest: the second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:

- (a) A criminal offence is committed.
- (b) Your authority some other person fails to comply with any legal obligation to which they are subject.
- (c) A miscarriage of justice occurs.
- (d) The health or safety of any individual is in danger.
- (e) The environment is likely to be damaged.

- (f) That information tending to show any matter falling within (a) to (e) is deliberately concealed.

In looking at whether disclosure is reasonable and in the public interest for the purposes of the code of conduct for Members, one has to take account of the Human Rights Act. In particular, article 10 (right to freedom of expression) and article 8 (right to respect for private and family life, home and correspondence.) Any interference with the public interest in disclosure has to be balanced against the interference with the right of the individual to respect for their private life. Neither article 8 nor article 10 has any pre-eminence over the other.

C. Good Faith: the third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.

D. Council's Reasonable Requirements: The fourth requirement, that you comply with the reasonable requirement of your authority, means that before making the disclosure you must comply with your authority's policies or protocols on matters such as whistle-blowing and confidential information, you must raise your concerns through the appropriate channels set out in such policies or protocols.

5.2 Given the restrictions and qualifications set out above, you need to proceed with extreme caution before disclosing confidential information's. If you are unsure, it is always advisable to seek guidance from the Chief Executive or the Monitoring Officer.

6 Position regarding officers

6.1 Although (until now) there is no a statutory code of conduct for officers similar to the code of conduct for Members, officers are subject to a duty of confidentiality under their contract of employment. The unauthorised disclosure of information is a disciplinary offence which in certain cases could lead to dismissal. In addition to the other express or implied conditions of contracts of employment, officers are subject to the Code of Conduct for Employees which forms part of the Council's constitution. In particular, paragraph 14 of the Code outlines the duties of officers, which are similar to the duties imposed on Members. They include the following:

"You should be aware that types of information which must remain confidential (even after you or the person concerned has left employment with the Council) include:

- *personal information given in confidence*
- *information that might compromise the right of commercial confidentiality*
- *information that if disclosed might prejudice enforcement action*
- *information that the authority is not allowed by law to disclose (e.g. under data protection legislation)*
- *information relating to the prevention, investigation or prosecution of a crime*
- *information that is defamatory*
- *requests for information that are unreasonable because of its volume or complexity*

“You should never pass on information, confidential or otherwise, for personal or financial benefit.

“You should be clear about the scope of information to which you have access and the constraints and freedoms applicable.”

7 Whistleblowing

- 7.1 The Public Interest Disclosure Act 1998 gives employees and contract workers protection from detrimental treatment if, in the public interest, they “blow the whistle.” However, the types of disclosure that are protected by the Act are restricted. They include disclosure of a criminal offence, a breach of legal duty, a miscarriage of justice, damage to the health or safety of an individual, damage to the environment and any deliberate concealment of information tending to show any of the foregoing.
- 7.2 In order for the protection to apply, the disclosure has to be to the employer (i.e. the council itself) or some other person prescribed by regulations. The secretary of state has made regulations which prescribe, among others, the District Auditor, the Charity Commission, the Data Protection Registrar, the Environment Agency and the Health and Safety Executive. In some cases an employee may disclose information to a person not prescribed by the regulations, but only if he/she believes that the disclosure to the employer would result in the destruction or concealment of the information. Disclosure to a newspaper would therefore not be covered the act in most situations.

8 Some “Do’s and Don’ts”

8.1 By way of good practice, the following “Do’s and Don’ts” are suggested for Members.

“Do’s”:-

- When seeking access to what you believe to be sensitive or confidential information, you should, in the first place, approach a senior officer, preferably at Director or Assistant Director level.
- Unless it is obvious from the context, you should always say what you need the information for so that a “need to know” can be established.
- It is usually better to ask for a briefing or advice from officers rather than demanding to see files or original documents. If you are not satisfied with the information, you could always ask for specific documents.
- One aspect of the need to know principle is proportionality. In asking for information and documents therefore you need to ensure that what you are asking (in terms of volume of documents, time needed to locate, research and collate the information etc.) is commensurate to your need to know.
- Information in documents held by the Council belongs to the Council corporately rather than to individual officers or Members. Members and officers therefore need to accept that they do not “own” information or documents and they should access them or disclose them only for the purposes of discharging their functions.
- If Members have concerns about matters of a confidential nature, they should raise them with the Chief Executive or the relevant Director. If they have serious concerns and believe that disclosure would hamper a resolution of the matter, they may, in appropriate cases, raise the matter with the District Auditor or, in cases involving a criminal offence, the police. Disclosure of confidential information to the press is most likely to involve a breach of the code of conduct for Members and is rarely justified.
- Members should have regard to their fiduciary duty to the Council and council taxpayers and that they have joint responsibility to avoid the disclosure of information of a commercially sensitive nature. Any confidential information gained by Members in connection with pending or ongoing litigation should not be disclosed under any circumstances as this would amount to a breach of trust.

- Before asking for information of a confidential or sensitive nature you should always ask yourself whether you have a “need to know.”

“Don’ts”:-

- Never allow your party political interests to override the interests of the Council and Council Tax payers in the way that you deal with access to or the disclosure of information.
- Just because communication is not labelled “confidential”, you should not assume that it is for general release. You should always consider the circumstances.
- The disclosure of confidential information that does not come within the narrowly defined exemptions is a breach of the Code of Conduct. You should not try justify any such action by reference to other principles.
- Do not disclose information gained while serving in working groups or panels, which is not meant to be for public consumption. You should have regard to the guidance on working groups, which states that there is a presumption that information relating to the business of such groups is confidential.
- Members should avoid stepping into a role, which is more appropriate for officers, and Officers likewise should respect Members’ need to know and not withhold information unless there is good reason for doing so.
- Don’t take risks. If in doubt, ask!

9 General

- 9.1 This paper is meant by way of general guidance as does not attempt to cover all eventualities. If you need further advice or clarification, you may contact Alex Bailey, Director of Strategy & Governance (and Monitoring Officer), on extension 1295 or Abraham Ghebre-Ghiorghis, Head of Law, (and Deputy Monitoring Officer) on extension 1500.

Abraham Ghebre-Ghiorghis
Head of Law (and Deputy Monitoring Officer)
January 2010

Subject: *Members' Web Pages – Review of Guidance*
Date of Meeting: **19 January 2010** **Standards Committee**
Report of: *Director of Strategy and Governance*
Contact Officer: Name: Abraham Ghebre-Ghiorghis Tel: 29-1500
Caroline Banfield 29-1126
Wards Affected: All

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

- 1.1 Following two recent complaints, the Standards Committee has asked for some revisions to the existing Members' Web Page Policy, to clarify the guidance given on certain issues. A revised guidance was submitted to the September Meeting of the Committee. The Committee approved the revised guidance subject to the Governance Committee's comments. The Governance Committee met on 17 November and supported further amendments. This report seeks final approval from the Standards Committee including the modification to paragraph 6 as agreed by the Governance Committee.

2. RECOMMENDATIONS:

- 2.1 That the **Standards Committee:**
- (a) Notes and approves the content of the revised Members' Web Page Policy.
 - (b) Requires all Members who have pages published on the Members' Web Pages to sign the revised Web Page Policy as a condition of remaining published on the site and that any Members wishing to join the site in the future should be granted access to it on condition that they first sign a copy of the revised Members' Web Page Policy.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Members' Web Pages were launched in July 2006 in order to benefit both councillors and residents by:
- Providing information on the local area and councillor activities.
 - Facilitating increased communication and feedback between councillors and constituents.

- Promoting understanding of the role of councillors and of the local democratic process.
- 3.2 Prior to the launch, an Acceptable Use Policy was drafted to emphasise a number of legal issues that could potentially affect website authors. The policy was approved by the Member Development Working Group and subsequently by Standards Committee at its meeting of 14 July 2006. Any member who wished to publish content on the Members' Web pages was asked to sign his/her acceptance to be bound by the policy as a prerequisite to being supplied with logon details.
 - 3.3 On 12 September 2006, Standards Committee approved a revised version of the Acceptable Use Policy, and renamed it the Members' Web Page Policy (copy attached as Appendix One). The revised version contained further information on web page content that could be construed as "political" and also highlighted councillors' duty to promote race equality. All councillors who were live on the site were asked to sign this revised document to indicate their agreement to be bound by it and any new entrants to the site were also asked to sign it.
 - 3.4 Since July 2006, the council's complaints team has received two formal complaints regarding content on the Members' web pages. A Standards hearing panel met to consider the complaints in mid June 2009. The substance of the complaints included concern that the Web Page Policy had been breached through inappropriately publicised political events.
 - 3.5 The Standards hearing panel concluded that the Web Pages Policy had not been breached but that the complaint had highlighted a need for further guidance to be issued to all members. The panel stated that it would be helpful for the Policy to be reviewed in order to "set more clearly defined boundaries on what matters can properly be communicated using council resources, with particular reference to support for political events and information about visiting politicians."
 - 3.6 The hearing panel also called for the Policy to state clearly whether members may use web pages to refer to national events and issues as well as local events and issues.
 - 3.7 In response to the recommendations of the Standards hearing panel, paragraph 9 of the Web Pages Policy has been redrafted. The changes from the original text are shown in italics and underlined text in the document at Appendix One.
 - 3.8 An additional paragraph has also been added to the Policy (paragraph 6) to remind members of the position when linking to external websites from their Members' web pages.
 - 3.9 The suggested amendments were agreed by the Standards Committee in September subject to the approval of the Governance Committee. At its meeting on 17 November the Governance Committee was informed of concerns expressed by Members about the application of requirements under paragraphs 6(i) (ii) and (iii) regarding external web links. The

Committee agreed modification to the text under “external links” and this has been incorporated into the revised draft to make it clear that the restrictions would apply only if the Member knows or would be reasonably expected to know of the breach. Extracts from the proceedings of the Governance Committee are attached in Appendix 2. The Standards Committee is recommended to approve the additional modification before the guidance is issued.

4. CONSULTATION:

- 4.1 Changes to the Members’ Web Page Policy have been requested by a Standards hearing panel and approved changes will be referred to Standards Committee for information.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

There are no financial implications arising from the report. On-going support will continue to be met from existing Democratic Services budgets.

Finance Officer Consulted: Peter Francis

Date: 21/08/09

5.2 Legal Implications:

Members are required to use the Member Web Pages in accordance with the Web Page Policy. The policy addresses the key legal issues for Members to have regard to. They are: (a) avoid inclusion of any defamatory material, (b) avoid inclusion of any political promotion or political campaigning material. (c) comply with data protection confidentiality requirements, (d) comply with the council’s Code of Conduct for Members, (e) avoid copyright infringement, (f) observe the terms and conditions of the Members Web Page Policy.

Lawyer Consulted: Elizabeth Culbert

Date: 19/08/09

5.3 Equalities Implications:

The website meets accessibility standards. All members are offered this facility.

5.4 Sustainability Implications:

There are no sustainability implications arising from this report.

5.5 Crime & Disorder Implications:

There are no Crime and Disorder implications arising from this report.

5.6 Risk and Opportunity Management Implications:

The main risks associated with use of the site are that individual members could be found to have breached the code of conduct and/or to be legally liable for any of the other issues outlined in 5.2 above. The main risk for the council is that it could be found to have acted unlawfully in allowing its resources to be used for political purposes, contrary to the Local Government Act 1986. The opportunities associated with the use of this site are that it will improve community engagement and raise the profile of members and the council.

5.7 Corporate / Citywide Implications:

There are none.

SUPPORTING DOCUMENTATION

Appendices:

1. Members' Web Page Policy.
2. Extract from the proceedings of the Governance Committee meeting held on 17 November 2009.

Documents in Members' Rooms:

None.

Background Documents:

None.

Brighton & Hove City Council

Members' Web Page Policy

1. Introduction

1.1 The Councillors' Web Site is designed to provide Councillors with an improved and technological up-to-date medium of communication with their constituents. Web Sites of this nature are increasingly being used as a source of imparting information and facilitating interaction between Councillors and constituents while allowing Councillors to raise their personal profile as well as their democratic role within the local community. Councillors' Web Sites can also be used to encourage feedback from constituents as well as keeping the local community informed of matters affecting the community, news, events, surgery times etc.

1.2 Brighton & Hove City Council's Members' Web Page Policy is designed to afford protection for Councillors and to ensure that they get maximum value from their use of their web pages in a way that does not infringe any legislative or regulatory requirements as well as any existing Codes of Practice in a manner that would bring either their own or the Council's reputation into disrepute. The Council makes the facilities available for the use of Members in connection with Council business. Like all the Council's ICT equipment and systems, they must not be used for any purpose other than those directly concerned with official Council business*, or the work of Elected Members.

*'Official Council business' means matters relating to a Member's duties as an elected Councillor; as a member of a Committee or Scrutiny Panel, sub-Committee or as a Council representative on another body or organisation.

1.3 The Policy will explain the restrictions that will apply to Councillors in using the Web Site. In summary there are prohibitions against use of the Web Site for:

- any matter that would place the Councillor in breach of the Code of Conduct for Members (see section 2.1 below)
- any matter that would be against the decision making process (see section 3 below)
- financial gain (see section 4 below)
- the posting of illegal or inappropriate content (see section 5-6 below)
- political promotion or political campaign (see section 8-10 below)
- breach of confidentiality and data protection principles (see section 11 below and separate document "Data Protection: A Councillors Guide)

2 General usage

- Councillors are only permitted to use their Web pages in furtherance of their official role as an elected Member of Brighton & Hove City Council.
- Councillors are responsible for the content of their own web pages.
- The Council is not responsible for approving content placed on to Councillors' web pages.
- The Council does not authorise or in any way sanction or approve the publication of statements that may be construed as defamatory or in breach of equalities laws

2.1 The Council has adopted a Code of Conduct for Members. Councillors must ensure that they observe their obligations and responsibilities in the Code of Conduct together with any guidance that may be issued by the Standards Board for England and the Council's Standards Committee when using the Councillors' Web pages. In particular Councillors are reminded that the content of their web pages must comply with:

- the Council's Code of Conduct for Members
- any guidance issued by the Standards Board for England and the Council's Standards Committee
- the Council's Procedure Rules
- the Council's Equal Opportunities Policy*
- the Council's Use of ICT Policy
- the Code of Conduct for member/employee relations

* In 2000, the government gave most public authorities in Britain a legal duty to promote race equality ('race equality duty'). This means that, in carrying out its functions, the Council must now also have 'due regard' to how it will:

- Eliminate unlawful racial discrimination;
- Promote equal opportunities; and
- Promote good relations between people from different racial groups.

It is the responsibility of all Councillors and Council employees to look for and eliminate institutional racism and discrimination against all communities in the provision of services; as an employer; and as a democratic body, recognising that people are complex and may experience more than one form of discrimination. This includes discrimination on the basis of race and ethnicity (including travellers and Gypsies); homophobia; transphobia; ageism; sexism; and discrimination as a result of disability/learning disability; mental health; HIV/Aids; social class; refugee and asylum seeker status; and religion or belief.

2.2 Councillors are further reminded that the content of their web pages must:

- promote equality by not discriminating unlawfully against any person
- treat others with respect
- not compromise the impartiality of officers
- not contain information given them in confidence
- not bring them, fellow Councillors or the Council into disrepute
- not be used for political purposes (see below for further information)
- not infringe Copyright Law
- not breach the principles of data protection legislation

3. The Decision making process

Councillors must use their web pages responsibly and have regard to the decision making process:

- Councillors must not use their web pages in any way which taints the decision making process through biased or closed minds, based on a particular political view/personal interest. This could undermine the Councillor's commitment to consider openly all issues when the matter is determined;
- Councillors who are members of the Planning or Licensing Committees should not express personal opinions about Committee matters on their web pages as this will prevent them from being able to speak or vote as a member of that Committee when an application is determined.

4. Financial gain

Councillors must not use their web pages for financial gain. For example, web pages cannot be used for advertising a commercial service or for encouraging the Council to purchase a particular item or service.

5. Inappropriate content

The site must promote equality by not discriminating unlawfully against any person, must treat others with respect and not do anything which compromises the impartiality of people who work for or on behalf of the Council

- Councillors must treat officers' recommendations or known views impartially and should not refer to individual officers by name when commenting on Council recommendations or decisions.
- Councillors must not use their web pages to disclose information, which they know to be confidential.

6. Distribution/publication of any material on Councillors' web pages

Councillors must not distribute or publish any material that:

- (i) Infringes any intellectual property rights or is in breach of law, statute or regulation, including the Data Protection Act 1998;
- (ii) Is unlawful, defamatory, libellous, threatening, harassing, racially offensive, obscene, pornographic, indecent or otherwise objectionable;
- (iii) Contains any viruses or other computer programs intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any personal information

External Links

Where external links to personal blogs, web pages or political web sites exist these sites must comply with the restrictions at 6(i)-(iii) above provided that this will apply only to the extent that the Member concerned knows or would reasonably be expected to know that the contents of the website, personal blog etc breaches those requirements. External links may be removed without notice at the Council's discretion. The disclaimer below shall appear on Members Web Pages and shall apply to all external blogs or web pages:

"Please note that external links from this website may include material of a party political nature. Brighton & Hove City Council takes no responsibility for information contained on external links from this website. Views expressed by individual Councillors on their own webpages are not necessarily those of the Council itself."

7. Monitoring Web pages and links

Councillors must:

- Monitor for libellous or defamatory material and must remove any such material when becoming aware of its existence;
- Take responsibility for any legal fees, damages or other expenses that may be incurred as a result of publication by them;
- Maintain and promptly update the information on their web pages to ensure it is true, accurate, current and complete.

Council checks

- One or more Council officers will periodically review the content of web pages authored by Members, including checking compliance with this policy, and if necessary may prevent publication of pages that appear not to comply. However, it must be noted that this is provided only as assistance as reviews are only likely to be carried out after page(s)/blog content has been authored by the Member,

such that the Council accepts no responsibility whatsoever for content. It remains the responsibility of the authoring Member to ensure that the material they produce complies with the law and this policy. Members who are unsure about any permissible uses of these facilities must seek clarification, in the first instance from the Member Support Officer.

Anyone who believes that they have been defamed by a Councillor will be able to take legal action directly against the Councillor concerned. Therefore care should be taken in what is said on the pages about other people or organisations. If the truth of any such comments could not be proved, then clearly there could be difficulty in defending a claim of defamation.

8. Political promotions or campaigns

According to the Local Government Act 1986, a council must not publish material which “in whole or part appears to affect public support for a political party”. Placing material on a publicly visible website almost certainly constitutes “publication” in this sense. This means that the Council would be acting unlawfully if it published such material on its own website.

The Code of Recommended Practice on Local Authority Publicity sets out detailed guidance on publicity material produced by councils. The Code makes specific reference to the situation in the pre-election period as well as in relation to councils providing “assistance to others to issue publicity” which might be taken to apply to links from council websites. As all Councillors’ web pages are funded by the Council, Councillors may not use their web pages to promote political campaigns or particular political stances on issues. For example:

- They must not use their web pages to promote a political party or persons identified with a political party.
- They must not use it to promote or oppose a view on a question of political controversy which is identifiable as the view of one political party and not of another.

The Code of Recommended Practice on Publicity states:-

“Publicity about individual Councillors may include the contact details, the positions they hold in the Council (for example Chair of a Scrutiny Committee) and their responsibilities. Publicity may also include information about individual Councillors’ proposals, decisions and recommendations only where this is relevant to their position and responsibilities within the Council. All such publicity should be objective and explanatory and whilst it may acknowledge the part played by individual Councillors as holders of particular positions in the

Council, personalisation of issues or personal image-making should be avoided.

Publicity should not be, or liable to misrepresentation as being, party political. While it may be appropriate to describe policies put forward by an individual Councillor which are relevant to her/his position and responsibilities within the Council, and to put forward his/her justification in defence of them, this should not be done in party political terms, using political slogans, expressly advocating policies of those of a particular political party, or directly attacking policies and opinion of other parties, groups or individuals”

9. Publicity

9.1 As set out above, the Council is prohibited from publishing material that appears to be designed to affect public support for a political party and this restriction applies to material placed by individual Members on their Member web Page.

9.2 Subject to complying with the requirement at 9.1, Members may use their web pages to publicise issues relevant to council business or function.

9.3 Members are not precluded from referring in their web pages to an issue or event of a political nature, so long as the content complies with 9.1 and 9.2 above.

9.4 By way of example, subject to satisfying the conditions above, it would not be inappropriate for a Member’s web page to mention a forthcoming national political event or a visit by a national politician to Brighton & Hove. However, the Member author should be satisfied that the event or issue they are publicising is relevant to one or more functions of the authority.

10. Representation of the People Act 1983 and the Political Parties Elections and Referendums Act 2000

- These establish controls over political donations. A donation can include the provision of services or facilities. This means that, to the extent that Members website facilities are provided free of charge or at subsidized rates, they are regulated by the Act if they are used for political activity;
- During election times, including By-elections, (i.e. from the “notice of an election” to the election itself), most parts of relevant (in the case of By-elections) or all Councillors’ web pages will be

suspended. Visitors will still, however, be able to contact Councillors through the Council's main website.

11. Personal confidentiality

- Councillors must not disclose information given to them in confidence or information acquired, which they believe, is of a confidential nature, without first having the consent of a person authorised to give it. For example, details about a constituent who has made a complaint about a council service to the Councillor but does not wish their personal details to be passed to the Council.
- Councillors must not display or process personal data on their web pages other than for the purpose stated at the time of capture.
- In managing a web page Councillors may receive comments, enquiries or complaints from members of the public. Councillors may refer to (or publish) material that is based upon information drawn from the Council or obtained from external sources. All such personal information should be treated with care and respect for relevant data protection law.

12. Data Protection issues

Anyone processing personal data must comply with the eight Data Protection Act principles. (Please refer to Data Protection: A Councillor's Guide). The principles state that data must be:

- Fairly and lawfully processed;
- Processed for limited purposes;
- Adequate, relevant and not excessive;
- Accurate;
- Not kept longer than necessary;
- Processed in accordance with the data subject's rights'
- Secure;
- Not transferred to countries without adequate protection

Personal data covers both facts and opinions about the individual. It also includes information regarding the intentions of the data controller towards the individual.

The definition of processing incorporates the concept of obtaining, holding and disclosing.

13. Breach of the Members' Web Page Policy

- 13.1 Your authorisation to use the Members' Website automatically terminates without notice, at the Council's sole discretion, should you fail to comply with any of the Terms and Conditions of this Policy. Upon such termination you must cease all use of your web pages. This provision does not limit the Council's right to terminate at any time for any reason whatsoever.
- 13.2 A message will be posted on the website explaining that any visitor who wishes to complain about any Member's pages should, in the first instance, attempt to resolve any concerns with the Member direct. It is hoped that a number of potential complaints will be resolved informally in this way. It is also anticipated that some visitors will recognise that their concern is more connected to expressing a different point of view about published content rather than complaining that the content is intrinsically offensive, for example.
- 13.3 Visitors will also be offered the opportunity, in the case of serious complaints or complaints that were not resolved through discussion with the Member, to raise their complaint with the Standards and Complaints Team. The Standards and Complaints Team will refer all complaints to Democratic Services (who will discuss these with the Member concerned) and/or will direct complainants to the Standards Board as appropriate.
- 13.4 Staff in Democratic Services reserve the right to suspend a Member's pages while they or the Standards Board investigate any complaint and they also reserve the right to close a Member's pages permanently in the event of a serious complaint being upheld as well founded.
- 13.5 Democratic Services also reserve the right to suspend or remove permanently any pages that they themselves consider to be inappropriate, including in cases where no complaint has yet been received.

UNDERTAKING

I have read and understood the above Members Web Page policy and agree to be bound by the terms set out in it.

Signed:..... Date:

Print name:.....

**EXTRACT OF THE PROCEEDINGS FROM GOVERNANCE COMMITTEE HELD ON 17
NOVEMBER 2009**

BRIGHTON & HOVE CITY COUNCIL

GOVERNANCE COMMITTEE

4.00PM 17 NOVEMBER 2009

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Oxley (Chairman), Simpson (Deputy Chairman), Elgood, Fallon-Khan, Kemble, Mears, Mitchell, Randall, Simson and Taylor

Also in attendance: Councillor Bennett and Dr M Wilkinson (Chairman of the Standards Committee)

PART ONE

51. MEMBERS' WEB PAGES GUIDANCE - REVIEW OF GUIDANCE

51.1 The Committee considered a report of the Director of Strategy & Governance concerning the revised draft Members' Web Page Policy (for copy see minute book).

51.2 Further to representations made to the Head of Law by Councillor Kitcat outside of the meeting, the Head of Law proposed a further amendment to the revised guidance in relation to the monitoring of external links on Members' web pages; councillors would remain responsible for the content of external links, but only to the extent to which they know or would reasonably be expected to know whether the content failed to comply with the restrictions detailed in the revised policy.

51.3 Members of the Committee agreed that this would reduce the burden on councillors while preserving the responsibility.

51.4 RESOLVED –

(1) That Members approve the revised Members Web Policy, including one further amendment as described by the Head of Law.

(2) That the Committee requires all Members who have pages published on the Members' web pages to sign the revised Web Page Policy as a condition of continuing to use the web page facility and that Members wishing to join the site in the future be granted access to it on condition that they first sign a copy of the revised Members' Web Page Policy.

(3) That the operation of the policy be monitored and a report comes back to the Committee in six month time.

Subject: *Complaints Update***Date of Meeting:** **19 January 2010****Report of:** *Monitoring Officer***Contact Officer:** Name: Brian Foley Tel: 29-3109E-mail: brian.foley@brighton-hove.gov.uk**Wards Affected:** All**FOR GENERAL RELEASE****1. SUMMARY AND POLICY CONTEXT:**

- 1.1 Complaints regarding Member conduct are administered under the arrangements as defined by The Standards Committee (England) Regulations 2008 which came into effect on 08 May 2008. These regulations are derived from the Local Government Act 2000 as amended by the Local Government and Public Involvement in Health Act 2007.
- 1.2 This report gives information about Standards Complaint being dealt with in the council year 2009/10.
- 1.3 Corporate complaints are dealt with under the Corporate Complaints Procedure at Stage 1, Stage 2 and via the Local Government Ombudsman. The powers of the Ombudsman are set out in the Local Government Act 1974.
- 1.4 This report contains a very brief summary of corporate complaint activity.

2. RECOMMENDATIONS:

- 2.1 The Standards Committee is asked to note the report.

3. RELEVANT BACKGROUND INFORMATION:

- 3.1 The Local Government Act 2000 requires the names of complainants and of Members about whom allegations have been made to be kept confidential.

3.2 **Summary of complaints about member conduct progressed in the Council year 2009/10**

3.2.1 **Complaints where Standards Committee Assessment Panel decided to refer the complaint to the Monitoring Officer for Investigation**

Complaint 1

Case Number **SCT065STDS / BHC-000861**

Complainant: Elected Member

Date of complaint: 16 February 2009

Date of Assessment Panel: 11 March 2009

Allegation:

It was alleged that a Member had breached the following sections of the Code of Conduct:

Paragraph 5 in that they had failed to conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

It was further alleged that the Member failed to declare a Personal Interest which was also a Prejudicial Interest and was in breach of paragraphs 8(1) and 10(1) of the Code of Conduct

Decision of Assessment Panel:

Referred to the Monitoring Officer for investigation.

Outcome:

No breach of the code of conduct.

Complaint 2

Case Number **SCT066STDS**

Complainant: Elected Member

Date of complaint: 27 February 2009

Date of Assessment Panel: 11 March 2009

Allegation:

It was alleged that a Member had breached the following section of the Code of Conduct:

Paragraph 5 in that they had failed to conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

Decision of Assessment Panel:

Referred to the Monitoring Officer for investigation.

Outcome:

No breach of the code of conduct.

Complaint 3

Case Number **SCT070STDS**

Complainant: Elected Member

Date of complaint: 27 February 2009

Date of Assessment Panel: 02 April 2009

Allegation:

It was alleged that a Member had breached the following sections of the Code of Conduct:

Paragraph 3(1) in that they had failed to treat others with respect.

Paragraph 5 in that they had failed to conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

Paragraph 6 (b)(i) in that they had failed when using or authorising the use by others of the resources of the authority to act in accordance with the authority's reasonable requirements, and, 6(b)(ii) failed to ensure that such resources are not used improperly for political purposes (including party political purposes).

Decision of Assessment Panel:

Referred to the Monitoring Officer for investigation.

Outcome:

The matter has been referred to a Hearing Panel of the Standards Committee.

Complaint 4

Case Number **BHC-001168**

Complainant: Member of the public

Date of complaint: 28 July 2009

Date of Assessment Panel: 02 September 2009

Allegation:

It was alleged that a Member had breached the following section of the Code of Conduct:

Paragraph 3(1) You must treat others with respect

Paragraph 3(2)(b) You must not bully any person

Paragraph 3(2) (c) You must not intimidate or attempt to intimidate any person who is or is likely to be , a complainant, a witness or involved with the administration of any investigation or proceedings.

Paragraph 5 in that they had failed to conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

Decision of Assessment Panel:

Referred to the Monitoring Officer for investigation.

Outcome:

A report has been prepared for Standards Committee Consideration Panel.

3.3 **Complaints where the decision of the Standards Committee Assessment Panel was to take no further action**

Complaint 5

Case Number **BHC-001592**

Complainant: Member of the public

Date of complaint: 12 October 2009

Date of Assessment Panel: 03 November 2009

Allegation: It was alleged that a Member breached:
Paragraph 3(1) in that they had failed to treat others with respect
Paragraph 3(2)(a) in that they may have done something which may cause the authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006)
Paragraph 3(2)(b) in that they had bullied another person
Paragraph 5, in that they had failed to conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

Decision of Assessment Panel:

Alternative Action in respect of Paragraph 3(1).

Review Requested:

Date Review requested: 17 December 2009

Date of Review: 13 January 2010

Decision of Review Panel:

TBC

Complaint 6

Case Number **BHC-001719**

Complainant: Member of the public

Date of complaint: 29 October 2009

Date of Assessment Panel: 03 November 2009

Allegation: It was alleged that a Member breached:
Paragraph 3(1) in that they had failed to treat others with respect
Paragraph 3(2)(a) in that they may have done something which may cause the authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006)
Paragraph 3(2)(b) in that they had bullied another person
Paragraph 5, in that they had failed to conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

Decision of Assessment Panel:

Alternative Action in respect of Paragraph 3(1).

Review Requested:

Date Review requested: 18 December 2009

Date of Review: 13 January 2010

Decision of Review Panel:

TBC

3.4 **Complaints where the decision of the Standards Committee Assessment Panel was to take no further action**

Complaint 7

Case Number **BHC-000379**

Complainant: Member of the public

Date of complaint: 20 May 2009

Date of Assessment Panel: 22 June 2009

Allegation:

It was alleged that a Member had breached the following sections of the Code of Conduct:

Paragraph 3(1) in that they had failed to treat others with respect, and Paragraph 6(b)(i) in that there had been a failure when using or authorising the use by others of the resources of the authority to act in accordance with the authority's reasonable requirements.

Decision of Assessment Panel:

No Further Action

Review Requested:

Date Review requested: 26 June 2009

Date of Review: 11 September 2009

Decision of Review Panel:

No Further Action

Complaint 8

Case Number **BHC-000554**

Complainant: Elected Member

Date of complaint: 21 May 2009

Date of Assessment Panel: 22 June 2009

Allegation: It was alleged that a Member had breached the following section of the Code of Conduct:

Paragraph 5, in that they had failed to conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

Decision of Assessment Panel:

No Further Action

Review Requested:

Date Review requested: 29 June 2009

Date of Review: 08 September 2009

Decision of Review Panel:

No Further Action

Complaint 9

Case Number **BHC-000555**

Complainant: Elected Member

Date of complaint: 21 May 2009

Date of Assessment Panel: 22 June 2009

Allegation: It was alleged that a Member had breached the following section of the Code of Conduct:

Paragraph 5, in that they had failed to conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

Decision of Assessment Panel:

No Further Action

Review Requested:

Date Review requested: 29 June 2009

Date of Review: 08 September 2009

Decision of Review Panel:

No Further Action

Complaint 10

Case Number **BHC-001475**

Complainant: Member of the public

Date of complaint: 30 September 2009

Date of Assessment Panel: 19 October 2009

Allegation: It was alleged that a Member had breached the following sections of the Code of Conduct:

Paragraph 3(1) in that they had failed to treat others with respect

Paragraph 3(2)(b) in that they had bullied another person

Paragraph 3(2)(c) in that they had intimidated or attempted to intimidate any person who was or was likely to be, a complainant, a witness or involved with the administration of any investigation or proceedings.

Paragraph 3(2)(d) in that they had done something which compromised or was likely to compromise the impartiality of those who work for, or on behalf of the authority.

Paragraph 5, in that they had failed to conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

Paragraph 6(a) in that they had attempted to use their position as a member improperly to confer on themselves or any other person, an advantage or a disadvantage.

Paragraph 6(b) that they had failed when using or authorising the use by others of the resources of your authority to: (i) act in accordance with the authority's reasonable requirements; (ii) ensure that such resources are not used improperly for political purposes (including party political purposes).

Decision of Assessment Panel:

No Further Action

Review Requested:

Date Review requested: 21 October 2009

Date of Review: 03 November 2009

Decision of Review Panel:

No Further Action

3.5 **Complaints where a decision of the Standards Committee Assessment Panel is pending**

None.

3.6 **Summary of complaints received under the corporate complaints procedures in Quarter 2, 2009/10**

3.7 **Local Government Ombudsman Complaints**

3.7.1 The following table shows the number of complaints received from the Ombudsman during the first half year of 2009/10. There is comparative data for the full year 2008/09.

3.7.2 Looking at the proportion of complaints for the first half year there has been a reduction in numbers of complaints investigated by the Ombudsman.

Directorate		Reports	LS	NM	OD	OJ	Prem	NYD	Totals
ASCH	09/10		1	1	1			3	6
	08/09	0	4	17	2	2	8		33
CYPT	09/10			7	1			1	9
	08/09	0	2	9	1	1	0		13
Culture	09/10								0
	08/09	0	0	0	0	0	0		0
Env	09/10		2	4				2	8
	08/09	0	1	14	3	4	8		30
F&R	09/10		1	4					5
	08/09	0	2	3	0	4	6		15
S&G	09/10					1		1	2
	08/09	0	1	1	0	1	0		3
Total	09/10		4	16	2	1		7	30
	08/09	0	10	44	6	12	22		94

Reports: There have been no formal reports identifying maladministration causing injustice issued by the LGO against the Council.

Local Settlements: In such cases the investigation is discontinued because the LGO is satisfied that a suitable action has been agreed by the local authority.

No Maladministration: The LGO concludes their investigation by writing a formal report finding no maladministration by the council.

Ombudsman Discretion: The ombudsman issues a decision letter in which they decide to discontinue the investigation most commonly because there is found to be insufficient injustice to warrant continuing to investigate.

Outside Jurisdiction: These are cases that the LGO is unable to investigate.

Premature Complaints: Complaints that the local authority have not yet had opportunity to consider.

Not Yet Determined: Cases where the Council are awaiting a decision from the LGO.

3.8 Corporate Stage One and Two Complaints

3.8.1 The following table summarises data about numbers of complaints for each directorate during the first half year of 2009/10 and compares this to information for the whole of 2008/09.

3.8.2 Proportionally there have been fewer Stage One complaints in 09/10 than in 08/09. The significant reductions have been in Housing and in Benefits and Revenues.

3.8.3 Stage Two complaints have increased relative to those recorded in the previous year. Adult Social Care and Housing is very similar to the previous year. But complaints referred for further investigation about Environment and Finance and Resources have increased.

	Stage One		Stage Two	
	Q1,Q2 09/10	2008/09	Q1,Q2 09/10	2008/09
ASC&H	177	522	15	34
CYPT	14	54	1	2
Culture	21	45	0	0
Environment	497	1058	37	42
F&R	143	298	15	19
S&G	5	10	0	1
Totals	857	1987	68	98

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 the report.

Finance Officer Consulted: Anne Silley

Date: 17 December 2009

5.2 Legal Implications:

There are no legal implications.

Lawyer Consulted: Liz Woodley

Date: 17 December 2009

5.3 Equalities Implications:

There are no equalities implications.

5.4 Sustainability Implications:

There are no sustainability implications.

5.5 Crime & Disorder Implications:

There are no crime and disorder implications.

5.6 Risk and Opportunity Management Implications:

There are no Risk and Opportunity management Implications.

5.7 Corporate / Citywide Implications:

There are no Corporate or Citywide implications.

SUPPORTING DOCUMENTATION

Appendices:

None.

Documents In Members' Rooms:

None.

Background Documents:

None.

