

AUDIT & STANDARDS COMMITTEE

Agenda Item 67

Brighton & Hove City Council

Subject: Complaints Update
Date of Meeting: 22 January 2013
Report of: Monitoring Officer
Contact Officer: Name: **Brian Foley** Tel: **293109**
E-mail: brian.foley@brighton-hove.gov.uk
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This paper updates the Audit and Standards Committee on allegations about member conduct following the last report to Audit and Standards Committee on 20 November 2012.
- 1.2 The decision notices for complaints that have been closed are set out in Appendix 1.

2. RECOMMENDATION:

- 2.1 That the Committee note the report.

3. RELEVANT BACKGROUND INFORMATION

- 3.1 The current status of Code of Conduct complaints is:

3.1.1 Open complaints

- A complaint is being investigated with regard to an allegation that a member failed to act impartially and was unprofessional when chairing a meeting.
- A complaint where a decision has been taken to seek a local resolution with regard to an allegation that two members made derisory noises whilst a member of the public read out her deputation at Full Council.
- A complaint where additional information has been sought before the Monitoring Officer can make a decision how to progress the complaint with regard to an allegation that a member was trying to manipulate public opinion

3.1.2 Closed complaints

- One complaint where a decision has been taken to not investigate regarding the decision of councillors to remove another member from their group.
- One complaint where a decision has been taken to not investigate regarding an allegation that members had been disrespectful towards a member of the public and had discriminated against that person in making a decision about a traffic order.

3.2 The timescale for dealing with individual complaints is illustrated in the chart below.

3.2.1 Complaints about Member conduct should be acknowledged as soon as possible and within a maximum of 5 working days.

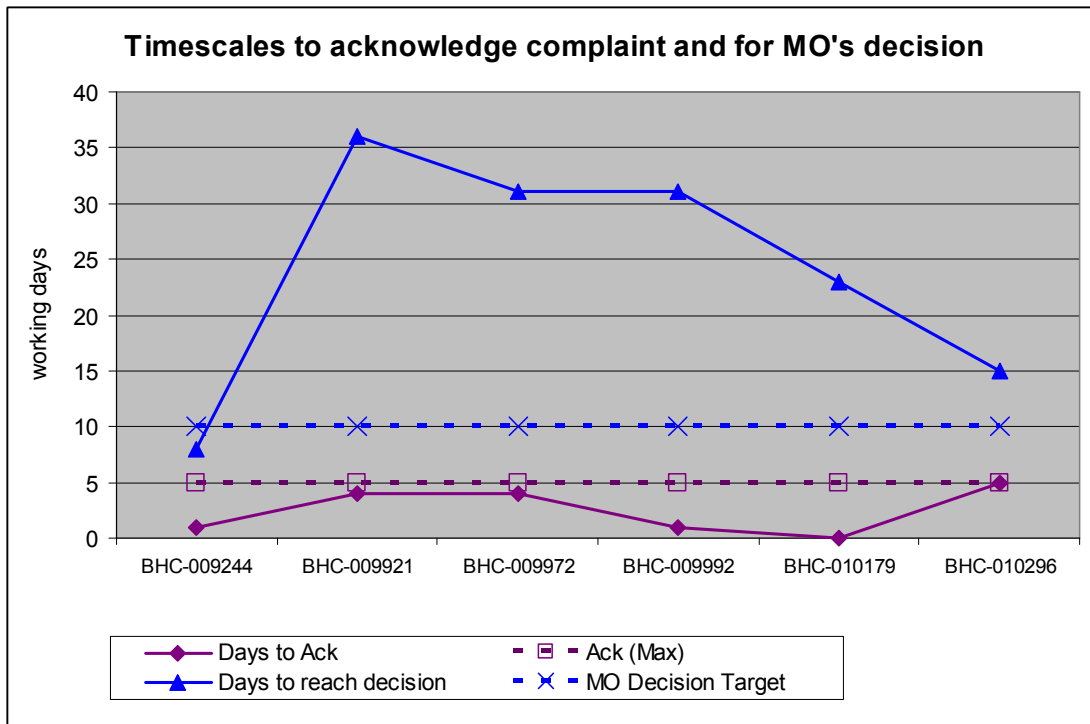
Comment: To date all complaints have been acknowledged within 5 working days.

3.2.2 The complainant will normally be informed within 10 working days how the matter will be dealt with.

Comment: It has not been possible to achieve this target to date. The Monitoring Officer has reviewed the decision process and it is anticipated that the measures taken should ensure that future decisions are reached within the 10 day timescale.

3.2.3 The whole complaint process should be completed within 65 working days from the date of receipt to date of hearing.

Comment: Since the introduction of the new procedures one investigation has been completed under transitional arrangements. This was completed in 110 working days. The time taken to introduce new working practices contributed to the delay in completing this investigation.



4. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 4.1 The costs of complaints in terms of administration and compensation awards (where appropriate) are met within the allocated budget.

Finance Officer Consulted: Anne Silley Date: 17/12/12

Legal Implications:

- 4.2 The council's arrangements under which complaints about Member conduct are investigated and decided conform with the relevant provisions of the Localism Act 2011 and local procedures agreed by Full Council in July 2012.

Lawyer Consulted: Oliver Dixon Date: 02/01/13

Equalities Implications:

- 4.3 There are no Equalities implications

Sustainability Implications:

- 4.4 There are no Sustainability implications

Crime & Disorder Implications:

- 4.5 There are no Crime and Disorder implications

Risk and Opportunity Management Implications:

- 4.6 There are no Risk and Opportunity Management implications

Corporate / Citywide Implications:

- 4.7 There are no Corporate or Citywide implications

SUPPORTING DOCUMENTATION

Appendices:

1. Summary of the decisions for complaints that have been concluded.

Documents In Members' Rooms

1. None

Background Documents

1. None

Appendix 1

Audit & Standards Case	5
S&C Reference Number	BHC-009972
Date Received	10/10/2012
Days to Acknowledge	4 days
Days for Monitoring Officer to reply	31 days
Complainant	
	Member of the Public
Summary of Complaint	
<p>A member of the public complained that named councillors deliberately discriminated against another councillor when they expelled that councillor from their group. The complainant alleged the councillor who was expelled had been intimidated.</p>	
Section of Code of Conduct that applies	
<p>Paragraph 5 You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.</p>	
Summary of the Monitoring Officer's decision	
<p>Under Brighton & Hove City Council arrangements for dealing with allegations of breaches of the Members' Code of Conduct I am required to consider your complaint and, after consultation with an Independent Person, take a decision as to whether it merits formal investigation.</p> <p>Having reviewed your complaint and having consulted with an Independent Person I have reached the view that the issues you have raised could not amount to a breach of the Code of Conduct.</p> <p>The decision taken to expel the councillor was taken by the Green Group within the council. The Local Government (Committees and Political Groups) Regulations 1990 give the group the power to determine who they want to be a member of the Group and to remove a Member they do not wish to belong to the Group. The rules within the party are matters for the Group itself. There was no necessarily right or necessarily wrong view about what the Group should or should not have done.</p> <p>I do not think the facts in this case are in dispute. However, even taking the facts at face value, I do not consider the decision of the Group could reasonably be treated as bringing the Council or their Office into disrepute or constitute a breach of the Code of Conduct. I have therefore decided that your complaint should not be investigated.</p>	

Just to be clear, I do not express any views about whether the decision of the Group was the right one or not. That is not a matter for me. This decision is exclusively based on whether the actions of the Group could amount to a breach of the Code of Conduct for Members and whether it is in the public interest to investigate the complaint.

Audit & Standards Case	7
S&C Reference Number	BHC-0010179
Date Received	6/11/2012
Days to Acknowledge	same day
Days for Monitoring Officer to reply	31 days
Complainant	Member of the Public
Summary of Complaint	
<p>A member of the public alleged that he had been discriminated against by councillors due to their presumption of what his political beliefs may have been and that a subsequent decisions made regarding a traffic order was unfairly coloured by their animosity towards him. He also alleged that another councillor had spoken about him in a derogatory and disrespectful manner.</p>	
Section of Code of Conduct that applies	
Paragraph 3(1) You must treat others with respect	
Summary of the Monitoring Officer's decision	
<p>Under Brighton & Hove City Council arrangements for dealing with allegations of breaches of the Members' Code of Conduct I am required to consider your complaint and, after consultation with an Independent Person, take a decision as to whether it merits formal investigation. An 'Independent Person' in this context is a person who has been appointed by the Council under the provisions of the Localism Act 2011 who is not an elected Councillor and who has no connection to the Council.</p> <p>Having carefully reviewed your complaint and having consulted with an Independent Person I have reached the view that the issues you have raised could not amount to a breach of the Code of Conduct. I have explained my reasoning for this decision below.</p>	
<ol style="list-style-type: none"> 1. The first element of your complaint is that a member described you as a 'Tory'. The facts of this complaint are not in question. You stated that you stood as a conservative candidate in the May 2011 elections and the member, when asked what he knew about you said that you "stood for tories in B and A Wrote me quite a threatening email." I do not think 	

this statement by the member can reasonably be described as a failure to treat you with respect. I have therefore decided that this element of your complaint should not be investigated.

2. The second element of your complaint is that the decisions of two other members (with regard to the traffic order in Western Road) were unfairly coloured by their animosity towards another party and their linking it to you. You believe you have been discriminated against on the grounds of your political beliefs.

Your complaint about the decision, and that you were discriminated against because of your political beliefs, is an issue which has previously been investigated and I do not see any advantage to be gained by reopening the issue. Therefore, I have decided it is not in the public interest to commit further resources to investigate this issue again.

3. The third element of your complaint is that a fourth member showed a degree of animus towards you in describing you as 'your favourite person' in an email to another councillor. You believe this was derogatory and showed at the very least a total lack of respect for a local resident with a legitimate cause to complain.

To refer to someone as "your favourite person", even where this may be interpreted as being said sarcastically in an email between colleagues would not meet the threshold for disrespect.

I have therefore decided that this element of your complaint should not be investigated.

4. In the final element of your complaint you state there has been a serious breach of your human rights and dignity and you quote Article 26 International Covenant on Civil and Political Rights. You state that this breach also amounts to a breach of the Members code of conduct.

Having considered this matter, I do not believe that there has been a breach of the International Convention you refer to or of the Human Rights Act. I do not therefore consider that this matter is appropriate to be investigated under the Member Code.

To be clear, my decision not to investigate your complaint is exclusively based on whether the actions of the members referred to could amount to a breach of the Council's Code of Conduct for Members, whether it is in the public interest to investigate the complaint and whether it would be proportionate in the circumstances. Having taken these into account, my conclusion is that this complaint should not be investigated.

