

Subject:	Standards – one year on		
Date of Meeting:	19 November 2013		
Report of:	Abraham Ghebre-Ghiorghis		
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 To review the operation of the Council's Code of Conduct and standards arrangements since they were adopted in 2012 and to consider recent Government Guidance in relation to disclosure of Members' interests.

2. RECOMMENDATIONS:

- 2.1 That Committee notes the report and the new DCLG Guidance on interests and agrees that no further changes are required to the Council's Code of Conduct for Members at this stage.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The Localism Act 2011 made fundamental changes to the system of regulation of standards of conduct for elected, and co-opted, Members. During 2012 the Council considered a series of reports to establish how it would respond to the changes and agreed a new code of conduct and associated procedures. The date for implementation of these changes was 1 July 2012, meaning the new arrangements have been in place for over 12 months. It is therefore appropriate for Members to consider how the different elements of the arrangements have worked and whether, in the light of experience, any changes are required.

Audit and Standards Committee

- 3.2 The Council's decision to move to a committee system coincided with the abolition of the statutory requirement to have a Standards Committee. As part of the review of the Council's decision making arrangements, the Council agreed that efficiency would be improved by joining the Standards Committee and Audit Committee to form one Committee.
- 3.3 The Committee has been kept up to date on complaints received in relation to Members through the quarterly complaints update reports. The Committee has also considered and approved important Council policies which relate to standards issues, such as the Whistleblowing Policy.

- 3.4 Whilst the number of standards items on the agenda is not always high, the intention was to ensure that there was a transparent Member forum at which to raise and oversee standards issues and this has been achieved. The appointment of two Independent Persons to the merged Committee has enabled their time and expertise to be used to consider both audit and standards issues. This is considered to be extremely valuable, reflecting CIPFA best practice in relation to audit arrangements as well as meeting the Localism Act 2011 requirements.
- 3.5 It is not proposed that any changes be made to the Audit and Standards Committee meeting arrangements at this stage.

The Code of Conduct for Members

- 3.6 Under the new arrangements, the Council was given greater discretion as to what it included within its new Code of Conduct, provided that it was consistent with the seven principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 3.7 Following the recommendations of a cross party Member Working Group, the Committee considered and agreed a new Code of Conduct for Members, which was adopted by full Council on 19th July 2012. The new Code was more detailed than the DCLG model, which the Working Group and Committee found to be lacking in sufficient detail to be useful to Members or the public. The Council's Code was reviewed again by Committee on 16th April 2013. The language of personal and prejudicial interests was considered to be clearer and more familiar than 'other disclosable interests' and an amended Code was adopted by full Council to reflect this on 9th May 2013.

Recent Government Guidance regarding interests

- 3.8 In September 2013, DCLG published 'Openness and Transparency on Personal Interests – A Guide for Councillors'. A copy is attached at Appendix One. The Guidance summarises the current standards regime and seeks to clarify that, although there is no longer a statutory requirement to declare personal interests, the DCLG view is that it is necessary to do so in order to comply with the Seven Principles of Public Life. The Guidance sets out that personal interests that should be declared would include membership of a Trade Union. The Guidance also clarifies that an exemption is not required for Councillors in relation to setting Council Tax.
- 3.9 As a result of the Council's early decision to adopt a fuller Code, covering personal interests as well as disclosable pecuniary interests, the subsequent recent DCLG guidance does not require any changes to the Code we have in place.

Dealing with Misconduct Complaints

- 3.10 The Localism Act 2011 enabled authorities to establish their own local processes in relation to complaints, which included the ability to streamline the investigation process and delegate aspects of decision making to the Monitoring Officer. The Council's new procedures were considered by Committee and adopted by full

Council on 19 July 2012. They were further revised on 16 April 2013 to ensure that only substantive breaches (as opposed to technical, minor breaches) were considered at a hearing of the Standards Panel. The intention in designing and reviewing the new system has been to maintain a clear, transparent route for complaints against Members to follow and for this to be dealt with more quickly than in the past.

3.11 Since moving to the new arrangements in July 2012, the Council has received twenty two complaints from members of the public alleging breaches the Code of Conduct. This is at a level which is approximately the same as under the previous arrangements. Under the former arrangements, the average number of complaints per annum was ten complaints from the public and six complaints from Members. Under the new arrangements the average has been sixteen complaints per annum from the public and nil from members. For the cases resolved to date, the time taken to conclude these complaints has significantly improved from an average of forty five days to sixteen days. The improved speed of resolution is attributable to the more streamlined processes in place.

3.12 Further detail as to how the arrangements have worked in practice is set out below:-

(i) Decision on whether to investigate a complaint

3.13 The Council agreed to delegate to the Monitoring Officer the initial decision on whether a complaint requires investigation, subject to consultation with an Independent Person. It was agreed that these arrangements would also offer the opportunity for the Monitoring Officer to seek to resolve a complaint informally, before taking a decision on whether the complaint merits formal investigation.

3.14 The ability to seek to resolve complaints outside of a formal investigation has been used in twelve of the twenty two cases referred to above. Of these twelve, nine have been determined as not suitable for investigation and three have been determined via informal resolution. In each case the informal resolution has taken the form of a written apology from the Member concerned.

3.15 Informal resolution is a means to ensure that complaints are listened to, considered and resolved within a quick time frame, which is preferable for both complainants and Members. Before coming to a view on whether there should be no investigation, an informal investigation or a formal investigation, the Monitoring Officer has sought the views of one of the Independent Persons and incorporated their feedback into the decision notice. Looking at the national picture, informal resolution is seen as the preferred route for resolving Member complaints.

3.16 Where the complaint has been determined as not suitable for investigation, this decision is based on an assessment that the complaint, if proved, would not constitute a breach of the Code of Conduct for Members.

(ii) Procedure for investigating complaints

3.17 Since the adoption of the new procedures, seven complaints have been referred for formal investigation (four of these complaints are being dealt with together in

one investigation). The decision to carry out an investigation in each case was made by the Monitoring Officer, following consultation with an Independent Person. Three investigation reports have been completed by the Council's Standards and Complaints Manager. This procedure for referral for investigation has therefore been 'tested' during the last 12 months and had been found to work well. It is anticipated that the new ability to resolve matters informally post investigation that was agreed by Committee in April 2013 (referred to at 4.18 below) will offer increased flexibility and contribute further to timely resolutions of complaints.

- 3.18 The current volume of matters referred for investigation in Brighton & Hove has been manageable in-house, within existing resources. It is proposed to continue with this approach.

(iii) Hearing Panel following investigation

- 3.19 In April 2013 Audit & Standards Committee approved revisions to the procedure for investigating alleged misconduct in order to streamline the process in cases where an investigation found that no breach or a technical but minor breach had occurred. In such cases, there is now an option for the complainant and subject member to agree to end the matter without the need for a formal hearing, subject to the consent of the Monitoring Officer.

- 3.20 Where an investigation finds a substantive breach, the matter must be referred to a Hearing Panel for determination. Such a Panel comprises four members plus an Independent Person acting in an advisory capacity. Actions can include:-

- A formal letter to the Member found to have breached the Code;
- Formal censure by motion;
- Removal by the full Authority from committee(s), Member Representative roles and all outside appointments to which he/she has been appointed or nominated by BHCC, subject to statutory and constitutional requirements;
- Press release/other appropriate publicity

- 3.21 In relation to the two formal investigations that have been heard to date by the Hearing Panel under the new arrangements, the Hearing Panel found that there had been no breach of the Code of Conduct.

Independent Persons

- 3.22 Following a recruitment and selection exercise, Dr David Horne and Dr Lel Meyel were appointed as Independent Members for a term of four years, with the possibility of an extension for a further period of four years. On every occasion when a complaint has been received, one of the Independent Persons has been consulted by the Monitoring Officer.

- 3.23 As these arrangements have worked well in practice, it is not proposed to make further changes at this stage. However, it is proposed to review the arrangements with the Independent Persons and seek to adopt any areas for improved working that can be identified through the national local government standards network.

Maintaining Registers

- 3.24 The Localism Act required Members to register their Disclosable Pecuniary Interests and required Council's to determine their own arrangements as to other interests to be registered. In line with the Council's decision to adopt a more detailed code of conduct, the Monitoring Officer has prepared and maintains a new register of interests and registration form incorporating both Disclosable Pecuniary Interests and Personal Interests. In accordance with the requirements of the Act, the forms have been published on the Council's website and are updated as and when required.
- 3.25 All Members have submitted their registration forms and Members have been updating their forms as their interests have changed. In order to ensure that the Register is kept up to date, it is proposed to carry out a review following the Annual Meeting of the Authority. This will involve all Members being sent their current entry and being asked to confirm whether it is up to date or to identify where revisions are needed.
- 3.26 It is considered that these arrangements will be effective in making sure that Members are aware of their duty to register interests and keep them updated.

Sensitive Interests

- 3.27 Where a Member is concerned that disclosure of the detail of an interest would lead to the member or a person connected with the Member being subjected to violence or intimidation, he/she may request the Monitoring Officer to agree that the interest is a "sensitive interest". If the Monitoring Officer agrees, the Member then only discloses the existence of the interest, rather than the detail of it at a meeting and the detail of the interest can be excluded from the published version of the register of Members' interests.
- 3.28 The ability to treat some interests as sensitive has been used in a very few cases, indicating that appropriate arrangements are in place for the exceptional circumstances where this is necessary.

Training for Members

- 3.29 Following the introduction of a revised Code of Conduct in May 2013 (referred to above), training on this and the recently agreed Social Media Protocol was offered to all Members. Two interactive sessions, both chaired by Cllr Hamilton in his capacity as Chair of Audit & Standards Committee, were run in July 2013, and 17 Members across all political groups attended.

The Committee on Standards in Public Life – 14th annual report

- 3.30 In January 2013, the Committee on Standards in Public Life reported and raised some areas of concern in relation to the new standards regime. In relation to Local Government, their report stated:-

“The new, slimmed down arrangement have yet to prove themselves sufficient for their purpose. We have considerable doubt that they will succeed in doing so and intend to monitor the situation closely.”

- 3.31 Particular areas for concern for the Committee on Standards in Public Life were the lack of sanctions beyond censure and also the new role of Independent Person. Any future reports or recommendations coming from the Committee will be reported to the Audit and Standards Committee.

4. COMMUNITY ENGAGEMENT & CONSULTATION

- 4.1 This report is being considered by Audit and Standards Committee to review the current arrangements and external engagement is not proposed in relation to these internal procedural matters.

5. CONCLUSION

Having agreed and implemented a new Code of Conduct and a new system of dealing with complaints against Members, it is important for the Committee to review the effectiveness of these arrangements.

6. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 6.1 The current procedures followed keep costs down by referring cases in-house to the authority's Standards and Complaints Manager, with no current proposals to outsource this work. The time taken to operate the code of conduct is absorbed into existing workloads, and costs including the recruitment and payment of the Independent Persons posts, maintaining the register of interests, holding the training sessions and undertaking the review, are all being met from existing resources.

Finance Officer Consulted: Peter Francis

Date: 30/10/13

Legal Implications:

- 6.2 There are no legal implications arising from the recommendations in the report.

Lawyer Consulted:

Elizabeth Culbert

Date: 14/10/13

Equalities Implications:

- 6.3 There are no equalities implications arising from this report.

Sustainability Implications:

- 6.4 The streamlined investigations process and ability to resolve complaints without a formal hearing will reduce the number of meetings, time and paperwork that is required to achieve a satisfactory conclusion of the complaint.

Any Other Significant Implications:

- 6.5 None

SUPPORTING DOCUMENTATION

Appendices:

Appendix 1: Openness and Transparency on Personal Interests – A Guide for Council

