

STANDARDS COMMITTEE

Agenda Item

Brighton & Hove City Council

Subject: Annual report of the Standards Committee
Date of Meeting: 11 November 2008
Report of: Director of Strategy & Governance
Contact Officer: Name: **Liz Woodley** Tel: **291509**
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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 September 2007.
- 1.2 Section 3.13 of the report details the Monitoring Officer arrangements.
- 1.3 An overall assessment is given at 3.20

2. RECOMMENDATIONS:

- 2.1 That the Committee reviews the period September 2007 to October 2008 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 & Reports to the Standards Committee

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 Councillor Mr G Rhodes throughout the period, and from March 2008, Parish Councillor Mr 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 & Simson until May 2008 then Councillors Drake and Fallas-Khan;

1 Green Member:- Councillor Roy in September 2007, Councillor Taylor until January 2008, Councillor Kennedy in March, Councillor Kitcat in May 2008 then Councillor Steedman

2 Labour Members:- Councillors Lepper and Carden

1 Liberal Democrat Member:- Councillor Watkins.

The Chairman throughout has been Dr. Wilkinson. The Deputy Chair was Councillor Drake. However, at its meeting on 10 June 2008, the Committee agreed that the position of Deputy Chair remain vacant, with one of the independent Members deputising in the event of the Chairman being unavailable. The Opposition Spokesperson was Councillor Lepper.

There have been 7 meetings of the full Standards Committee since September 2007, including the meeting on 18 September. The following matters have been considered:-

18 September 2007

Received report on Member complaints and service complaints.

Noted arrangements for Member training on the new Code of Conduct.

Approved the delegation of dispensation applications to the Hearing Panel.

Approved draft Guidance for Members regarding Newsletters and other publications.

Considered Annual report of the Standards Committee for the period September 2006 to September 2007

6 November 2007

Received reports on Member complaints and service complaints.

Noted a report on the 6th Annual Assembly of Standards Committees held in Birmingham on 15 & 16 October 2007;

Noted an update report on the introduction of the new local Code of Conduct

Noted a report on the key findings of the CIPFA/SOLACE (chartered Institute of Public Finance and Accountancy and Society of Local Authority Chief Executives and Senior managers) report on Delivering Good Governance in Local Government.

Approved revised Whistleblowing policy.

8 January 2008

Received reports on Member complaints and service complaints.

Considered draft Code of Corporate Governance and recommended adoption of the Code to Council

Approved delegation to Rottingdean Members' Hearing Panel of dispensation applications

Recommended to Council the appointment of a fourth independent person and second Rottingdean Parish Council representative to serve on the Committee.

Recommended to full Council a revised Code of Conduct, based on the national model code, to come into effect on 15 May 2008

Considered report of the Working Group on the implementation of the Local Government and Public Involvement in Health Act 2007

Noted a report concerning an investigation into a breach of confidentiality

Noted confidential minutes of Standards Hearing Panel held 14 December 2007

18 March 2008

Considered report of the working Group examining the implementation of the Local Government and Public Involvement in Health Act 2007.

23 May 2008 (special meeting)

Approved arrangements and procedures for dealing with ethical standards complaints against Members and authorised the Director of Strategy and Governance i) to make any necessary amendments, and ii) to appoint independent members to the Standards Committee for dealing with individual complaints, from independent persons who serve on other authorities' Standards Committees

10 June 2008

Received report on Member complaints and service complaints.

Noted report about the Council's new constitution and the provisions in it relating to the Standards Committee

Noted report on actions taken to revise the local Code of Conduct for Members

Noted and agreed proposed training initiatives for 2008/09

16 September 2008

Received report on Member complaints and service complaints.

Noted report concerning Standards Board guidance on "the Role and Make up of Standards Committees"

Noted that the Council's adopted procedures for local assessment, investigation and determination were in need of updating in light of legislative changes and Standards Board guidance. As an interim measure, the use of East Sussex Fire Authority's procedures for investigation and determination was approved.

3.2 **The Local Government and Public Involvement in Health Act 2007**

The Local Government and Public Involvement in Health Act has had a major impact on the ethical standards regime. The main provisions of the Act that affect this regime are:-

(a) New Powers for Standards Committees

Since 8 May 2008, **all** allegations of breaches of the code about Brighton & Hove or Rottingdean Parish Members are referred to the Council's Standards Committee, not the Standards Board. Officers need to bring each complaint before an Assessment Panel of Members which has 3 main options:-

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

An Assessment Review Panel can review any decisions if the complainant so requests.

(b) Revised Role of the Standards Board

Under the new arrangements, the role of the Standards Board changed from investigation of complaints to strategic regulation. It has a number of specific roles including:-

- (i) Issuing statutory and other guidance to local authorities;
- (ii) Requiring standards committees to report to the Standards Board in the performance of their duties;
- (iii) Suspending the powers of any Standards Committee to deal with complaints if it considers that performance is inadequate. If this happens, the Board can either deal with complaints itself or arrange for complaints to be dealt with by another authority.

3.3 **Sub-Committees of the Standards Committee**

Until 7 May 2008, the Committee had two Sub-committees, known as the Hearing Panels. They had been constituted to deal with any allegations of breaches of the local Code of Conduct for Members which had been referred by the Standards Board to the Council for determination.

The Panel which dealt with cases relating to the Council comprised three Independent Members (excluding the Parish Council representative) and two Councillors. The Panel which dealt with cases relating to Rottingdean Parish Council had the same membership except that one of the Councillors was replaced by the Parish Representative. Normally only 3 of the Panel would

actually be asked to attend any meeting, the ideal balance being 2 Independent Members and either one Councillor or the Parish representative as appropriate.

There was one meeting of the Hearing Panel during the period September 2007 to May 2008- on 14 December 2007. Further details are given in section 3.9 (Complaints to the Standards Board) below.

Since 8 May 2008, the Committee has had 3 Sub-Committees, known as the Assessment Panel, Assessment Review Panel and the Hearing Panel. The Assessment Panel has met twice, on 14 August 2008 to consider 4 complaints, and on 21 October to consider 2 complaints.

The Hearing Panel has met once, on 24 October 2008 to consider the 4 complaints referred to above.

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

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.

All Members of the Council have signed the declaration.

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.

The signed undertakings will be available at the meeting for inspection by the Standards Committee.

3.5 Register of Members' Interests

All Members (including Independent Members and co-optees with voting rights) are obliged to make declarations of interests in accordance with the requirements in the Council's local Code of Conduct.

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 Register will be available for inspection at the meeting.

3.6 Notification of Gifts and Hospitality Received

Until the new Code of Conduct came into force at the end of September 2007, there was a requirement for any Member (including Independent Members and co-optees with voting rights) who had received any gift or hospitality over the value of £25 in connection with membership of the Council to so declare in writing to the Monitoring Officer and a form was made available to Members for this purpose. Declarations were kept in a register.

The register is no longer required to be kept as a separate register. Under the new Code of Conduct gifts and hospitality have to be registered on the main public register.

3.7 Applications for Dispensation

In very 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.

In the period between the last report in September 2007 to date, there have been no applications for dispensations.

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.

The dispensations will be available as part of the register of interests for inspection by the Standards Committee at the meeting.

3.8 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. Until May 2008, this was done by applying to the Adjudicator. The function of granting exemptions has now transferred to the Standards Committee. During the period covered by this report, there have been no applications for exemption. This additional power is unlikely to have any significant impact on the Committee's workload, as nationally there have been few applications to the Adjudicator.

3.9 Complaints to the Standards Board

Until 7 May 2008 complaints about any failure by any Member to observe the local Code of Conduct were made to the Standards Board. Such complaints could either be rejected as outside the terms of reference of the complaint system, or referred for investigation. Investigations could either be centrally conducted or sent to the authority concerned for investigation. After investigation, if a case to answer was identified, the complaint was either determined centrally or locally.

In the period 19 September 2007 to 7 May 2008, there was only one new complaint made to the Standards Board. It was made on 4 April 2008, and rejected without investigation the same day. On 14 December 2007 the Hearing Panel met to consider a June 2007 complaint which had been referred by the Standards Board for local investigation and determination. The Panel accepted the Investigator's view that there had been no breach of the Code of Conduct which applied at the date of the incident complained of. The above information has been taken from the regular "Corporate Complaints Update" reports to Committee.

During the period in question, the SBE finally concluded a case which had been deferred pending the outcome of legal proceedings. The Ethical Standards Officer concluded that it was not an appropriate use of public resources to take further action.

3.10 Complaints to the Council

On 8 May 2008, the Standards Committee (England) Regulations came into force, and inter alia, transferred responsibility for the receipt of complaints moved from the Standards Board to the Council.

Since that date, there have been 6 complaints to the Council about Member Conduct.

3.11 Training

The Sixth Annual Assembly of Standards Committees, at Birmingham took place on 16 and 17 October 2007. It was attended on behalf of Brighton &

Hove City Council by the Chair and the Standards and Complaints Manager. Another Member of the Standards Committee, Melanie Carter and the Principal Solicitor Governance also attended on behalf of East Sussex Fire Authority. A report was made to the November 2007 meeting of the Standards Committee.

The Seventh Annual Assembly of Standards Committees, at Birmingham took place on 13 and 14 October 2008. It was attended on behalf of Brighton & Hove City Council by the Chair, the Standards and Complaints Manager and Councillor Steedman. The Senior Lawyer also attended on behalf of the East Sussex Fire Authority. A report is on the agenda for the meeting.

3.12 Issues for the future

Codes of Conduct for local government employees?

In August 2004 the Government consulted on a possible Code of Conduct for local government employees, which it had power to prescribe under the Local Government Act 2000. Implementation was delayed until the relevant department had an opportunity to consider the Code in the context of the wider review of the conduct regime for local government, and the lessons learned from the implementation of the new member code.

With the implementation of the new devolved conduct regime, and proposals to amend the Members' Code, the Government considers that the time is right to also consult on proposals to introduce a model employees' code. Accordingly it has now issued a White paper, "Communities in control: Real people, real power. Codes of Conduct for Members and Employees". The closing date for responses is 24 December 2008.

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 held 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 2007 Act gave the Secretary of State powers which could reverse the effect of the High Court decision. The Government has recently 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

3.13 The Monitoring Officer Functions

General:- The functions of the Monitoring Officer derive from statute, namely 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 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

The Director of Strategy & Governance is the Monitoring Officer. The Council is obliged to provide him in his role as Monitoring Officer with the necessary resources to enable him to discharge his functions.

He has appointed as Deputy Monitoring Officer the Head of Law and is also 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 Committee Administrators (who maintain the register of Members' interests and record declarations of interest at meetings.) All these staff are within his own department.

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.

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

In February 2008, the Audit Commission issued its Annual Audit and Inspection Letter. It was considered by the Policy and Resources on 6 March 2008. the council was rated as three-star under the 2007 Comprehensive Performance Assessment (CPA) framework. Its annual direction of travel was assessed as "improving well."

There were no comments in the Annual Audit and Inspection report dealing directly with complaints handling or other ethical issues.

3.14 **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.

3.15 **Procedures for dealing with local investigations and local determinations of ethical complaints**

The Council has adopted a procedure for the local assessment of complaints and interim procedures for the investigation and the determination of complaints. The investigation and determination procedures are being revised in the light of new Standards Board guidance, the Standards Committee (England) Regulations 2008 and actual experience of holding panel hearings.

3.16 **Liaison and Joint Working with Other Statutory Officers**

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.

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.

3.17 **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.

3.18 **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.

3.19 **Maladministration**

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. This team is part of the Monitoring Officer's department, in the Performance and Equalities section. The team also has responsibilities for ethical standards matters.

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.

Summary of complaints received under the corporate complaints procedures 2007/08

The Ombudsman received 93 complaints about the Council during 2007/08, a fall of 35 from the previous year. That reduction mainly resulted from falls in complaints about Housing, down by 8 to 24, Planning down by 18 to 14, and Education down by 6 to 5. Other complaints were broadly in line with previous years figures. Complaints about Parking and Highways increased by 5 to 14

15% of cases were resolved by Local Settlement which compares favourably to the national figure of 27%. 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. These investigations resulted in compensation payments amounting to £4000.

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

The Ombudsman considers that working relationships with the Council's complaints officers continue to be positive and professional.

Average response times continue to decrease to 28.7 days, just outside the target response time of 28 days.

The Council received 1788 Stage One corporate complaints in 2007/08, down 289 from the previous year. That reduction occurred as a result in 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.

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3.20 Overall Assessment

The standards of conduct among Members, Co-opted Members and Officers of the Council remain high and no significant problems have been identified. Although one case was referred to a Hearing Panel of the Standards Committee in the period covered by this report, it did not result in a finding that there had been any failure to observe the Council's Code of Conduct for Members.

There are no significant issues to be addressed in relation to complaints to the local Ombudsman.

All the audits undertaken by the Council internally as well as by external assessors regarding corporate governance are satisfactory overall.

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 none.

5.2 Legal Implications:

These are addressed in the body of the report.

Lawyer Consulted: Liz Woodley

Date: 28 October 2008

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:

1. None

Documents In Members' Rooms

1. None
- 2.

Background Documents

1. None
- 2.