

<b>Subject:</b>	<b>Review of procedure for investigating alleged breaches of members' code of conduct</b>		
<b>Date of Meeting:</b>	<b>16 April 2013</b>		
<b>Report of:</b>	<b>Monitoring Officer</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Oliver Dixon</b>	<b>Tel: 01273 291512</b>
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<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that the proposed amendments to the investigation procedure needed preliminary consideration by a members' working group held shortly before the committee meeting date.

**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 In September 2012 the council adopted a new procedure for investigating alleged breaches of the members' code of conduct, following the implementation of a revised standards regime required by the Localism Act 2011.
- 1.2 Since the procedure was introduced, a number of suggestions for improvement have been made. Accordingly, this report seeks the Committee's approval for proposed amendments intended to shorten the procedure in certain cases but without affecting the fairness of the outcome.

**2. RECOMMENDATIONS:**

- 2.1 That the Committee approve the proposed amendments to the procedure for investigating alleged breaches of the members' code of conduct, as set out in the body of the report and as illustrated in the flow chart at Appendix 1.

**3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 Audit & Standards Committee approved the existing investigation procedure on 25 September 2012.
- 3.2 Since then, the procedure has been followed in respect of all complaints about member conduct. On two occasions the alleged conduct has resulted in a Standards Panel hearing to determine the matter. Based on these experiences, a number of suggestions have been put forward that could lead to faster resolution in certain cases, without compromising the fairness of the overall process.

- 3.3 Under current arrangements, the Monitoring Officer – in consultation with the Independent Person – decides initially how the allegation should be dealt with, and if he commits the matter for investigation, the subsequent report by the Investigating Officer (IO) **must** be referred to a Standards Panel, regardless of the IO’s finding.
- 3.4 A situation may arise where the IO makes a finding of ‘no breach’, and both the complainant and subject member agree with this outcome. As things currently stand, there is no scope to conclude the matter other than by referring it to a Standards Panel, even in the situation described.
- 3.5 Apart from the significant administration involved, a Panel requires the attendance of three Members, the Independent Person, the IO, a legal adviser and, potentially, the complainant, subject member and their witnesses. To avoid unnecessary expense and time commitment, **it is proposed that** Standards Panels be reserved for those cases where –
- the IO finds there has been a substantive breach of the code (see further at paragraph 3.6 below);
  - the IO finds there has been no breach but the complainant disagrees; or
  - the subject member agrees with the finding of no breach but wishes to have the matter formally determined at a Panel
- 3.6 Under the proposal, a distinction is drawn between a ‘substantive’ breach, which would be referred to a Panel; and a ‘technical but minimal’ breach, which the Monitoring Officer could decide to settle informally. The latter class of breach is where the conduct complained of does on a strict interpretation amount to a breach of the code, but little or no culpability attaches to the subject member. For example, a member might make an administrative error on their declaration of interests form by recording correct information about an interest they may have but in the wrong section of the form. Technically, this contravenes the code because the member has made a false (or partially false) declaration, but if an investigation found this to be an innocent mistake which the member undertook to rectify forthwith, the breach would be minimal.
- 3.7 If the MO, in consultation with the IP, considered that it would not be in the public interest to refer a technical but minimal breach to a Panel, he would recommend to the parties that the matter be settled informally. Either party would, nonetheless, reserve the right to have the matter referred to a Panel for determination.
- 3.8 There are two over-arching principles associated with this proposal, in each case to further the public interest:
- (i) At any point during an investigation into an alleged breach, the Monitoring Officer may consult the parties as to whether they would accept an informal settlement as an alternative to formal resolution; and

- (ii) Even where the parties did agree to settle informally, or where an investigation found a breach to be 'technical but minimal', the Monitoring Officer – in consultation with the Independent Person – would reserve the right to refer the matter to a Standards Panel, where considered appropriate;

3.9 Where a matter is settled informally, the outcome would still be reported to the Audit & Standards Committee, but without naming the parties.

3.10 A flow chart illustrating the revised procedure, as proposed in this report, is set out at Appendix 1.

#### **4. COMMUNITY ENGAGEMENT AND CONSULTATION**

4.1 The Monitoring Officer has consulted a cross-party member's working group, together with the Independent Person, on these proposals.

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

##### Financial Implications:

5.1 If approved, the proposal could shorten the investigation procedure and obviate the need for a Standards Panel in some cases, resulting in a potential reduction in the resources allocated to this procedure.

*Finance Officer Consulted: Anne Silley*

*Date: 05/04/13*

##### Legal Implications:

5.2 The statutory framework for standards requires a local authority to have arrangements for investigating and deciding on alleged breaches of the code (section 28(6) of the Localism Act 2011), but does not prescribe the content; that is a matter for the authority itself. It is therefore open to the council to revise its arrangements as it sees fit. At Brighton & Hove, that task falls to the Audit & Standards Committee.

*Lawyer Consulted: Oliver Dixon*

*Date: 05/04/13*

##### Equalities Implications:

5.3 None

##### Sustainability Implications:

5.4 None

##### Crime & Disorder Implications:

5.5 None

Risk and Opportunity Management Implications:

5.6 An opportunity exists to streamline the investigation procedure by settling certain cases without the involvement of a Standards Panel.

Public Health Implications:

5.7 None

Corporate / Citywide Implications:

5.8 The proposal helps to portray the authority as a modern council, by making its internal processes as efficient as possible.

**SUPPORTING DOCUMENTATION**

**Appendices:**

1. Flow chart of proposed new investigation procedure

**Background Documents**

1. Localism Act 2011, part 1, chapter 7