

Brighton & Hove City Council

Procedure for Dealing with Allegations of Breaches of the Code of Conduct for Members

1. Introduction and legal framework

- 1.1 This procedure is made in accordance with section 28(6) of the Localism Act 2011 which requires the council to have in place arrangements for investigating and determining allegations that a member or co-opted member of the council has failed to comply with its Code of Conduct for Members.
- 1.2 This version of the procedure supersedes all previous versions.
- 1.3 The Code of Conduct to which this procedure relates was originally adopted by the Council in 2012 in accordance with section 27 of the Localism Act 2011, has undergone minor revision since then, and is set out in the Council's constitution or via this link: <http://www.brighton-hove.gov.uk/content/council-and-democracy/councillors-and-committees/constitution-brighton-hove-city-council>

2. Principles

The principles underpinning the procedure are:

- (i) a drive to engender member and public confidence that allegations of member misconduct will be dealt with effectively and efficiently;
- (ii) that Standards Panels reach their findings fairly and independently;
- (iii) that Standards Panel hearings be conducted openly, wherever possible

3. Making a complaint

- 3.1 If a person wishes to make a complaint about Member conduct, they should write to:

The Monitoring Officer
c/o Standards and Complaints
Brighton & Hove City Council
Grand Avenue
Hove
BN3 2LS

Or email Complaints@brighton-hove.gov.uk

Or use the web form at www.brighton-hove.gov.uk/complaints

- 3.2 The complainant will be asked to provide their name and a postal or email address. Only complaints from named individuals will be accepted.
- 3.3 Council officers wishing to complain about Member conduct are recommended to use the Code of Conduct for Member/Officer Relations but still have the option of using the complaints procedure set out here.
- 3.4 The Monitoring Officer will inform the complainant that their complaint will be assessed against the Code of Conduct for Members.
- 3.5 The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it, and will send the complainant standard information about the Council's policy on disclosing their identity, as set out in paragraph 4.2 below; and will require the complainant to confirm their agreement to this policy, in order for the complaint to proceed.
- 3.6 The Council aims to complete the complaint process within a maximum of three months from receipt.
- 3.7 Once a complaint has been filed with the Monitoring Officer, it may not be withdrawn without the consent of the complainant, the subject member and the Monitoring Officer.

4. Information provided to the Member complained about

- 4.1 The Member against whom the complaint is directed (the 'subject member') will be notified that a complaint has been received as soon as possible and in any event within 5 working days of the council receiving it, unless the Monitoring Officer considers that doing so may prejudice any investigation into the complaint.
- 4.2 The Monitoring Officer will provide the subject member with all documentation relevant to the complaint, including the identity of the complainant except where doing so might compromise the complainant's safety. (See also paragraph 6.2 below)

- 4.3 On first notifying the subject member, the council will discourage all parties from seeking actively to publicise the matter before the complaint has been fully considered by the Monitoring Officer and, if applicable, investigated.

5. Preliminary assessment

- 5.1 Subject to paragraph 5.2, the Monitoring Officer will, in consultation with the Independent Person, carry out a preliminary assessment in order to determine what action should be taken.
- 5.2 The Monitoring Officer reserves the right to refer the preliminary assessment to the Standards Panel in respect of any complaint.
- 5.3 The Monitoring Officer will seek to complete his/her assessment within 10 working days of receiving a valid complaint, although the process may take longer if more information is required from the complainant or subject member (or both) for a proper assessment to be made.
- 5.4 Pursuant to paragraph 5.3, the Monitoring Officer may – having regard to the views of the Independent Person – undertake small-scale preliminary enquiries directly related to the complaint, to help determine whether a formal investigation is required.
- 5.5 Based on the preliminary assessment, the Monitoring Officer may decide **not** to progress the complaint where –
- (i) the complaint is vexatious or frivolous in nature;
 - (ii) if proven, the complaint would not amount to a breach of the code of conduct for members; or
 - (iii) it would not be in the public interest to do so.
- 5.6 Where the circumstances in paragraph 5.5 do not apply, the Monitoring Officer may:
- (i) seek to resolve the complaint informally;
 - (ii) arrange for the complaint to be formally investigated;
- 5.7 An informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or some other action on their part. Where the Member makes a reasonable offer of informal resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 5.8 Where the complainant and subject member have consented to resolve the complaint informally by a particular means (for example, by written

apology), the member should co-operate with and adhere to that measure.¹

- 5.9 Complaints settled informally, whether at this stage or during the course of a formal investigation, will be reported to the Audit & Standards Committee but without naming the parties involved.
- 5.10 Where the parties attempt to resolve the matter informally but fail to reach a mutually agreeable outcome, the matter will, subject to 5.7 above, be referred for investigation. In the subsequent report to a Standards Panel, it will be stated that informal resolution was attempted but did not succeed. Details of the negotiations comprising those attempts will not be published.
- 5.11 If the complaint identifies conduct which, on the face of it, is a criminal offence or regulatory breach by any person, the Monitoring Officer may refer the matter to the Police and/or appropriate regulatory body as well as, or in lieu of, an investigation by the council.
- 5.12 On completion of the assessment, the Monitoring Officer will inform the complainant and subject member of his/her decision, with reasons.

6. Formal Investigation

- 6.1 If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another officer of the council, an officer of another local authority or an external investigator. The Investigating Officer will, subject to any direction from the Monitoring Officer, have discretion as to how the investigation is carried out.
- 6.2 The Investigating Officer will ask the complainant and the Member to provide their explanation of events, and will identify what documents he/she needs to see and whom he/she needs to interview. In exceptional cases, it may be appropriate to keep the identity of the complainant, witnesses, or key documents confidential where disclosure might prejudice the investigation.
- 6.3 The Investigating Officer will produce a draft report and send copies, in confidence, to the complainant and subject member, to give both an opportunity to identify any matter in the report which they feel requires more consideration.
- 6.4 Having received and taken account of any comments on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer. If the Monitoring Officer is not satisfied that the

¹ It is proposed that when the Code of Conduct for Members is next reviewed, the responsibility of the subject member to co-operate with agreed informal resolution be a requirement.

investigation has been conducted properly or that aspects of the report require revision or clarification, he/she may ask the Investigating Officer to reconsider his/her report.

- 6.5 Copies of the final report will be sent **in confidence** to the complainant and the member concerned.
- 6.6 At any point during the investigation, the Monitoring Officer may consult the parties as to whether they would accept an informal settlement rather than continue with the formal investigation. Having regard to the wishes of the parties and the views of the Independent Person, the Monitoring Officer may halt the investigation and seek to resolve the matter informally. Should that course of action prove unsuccessful, the formal investigation would be resumed.

7. Investigation Outcomes

- 7.1 On completion of a formal investigation, the findings available to the Investigating Officer in respect of each element of the Code of Conduct considered relevant are:
 - (i) A substantive breach
 - (ii) A technical but minimal breach
 - (iii) No breach

7.2 Substantive breach

Where the Investigating Officer finds that the subject member has substantively breached one or more elements of the code of conduct, the Monitoring Officer will refer the complaint to the Standards Panel for determination.

7.3 Technical but minimal breach

- 7.3.1 This finding reflects a set of circumstances 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. This could occur, for example, where the member had made an unintentional and minor administrative error on their declaration of interests by recording relevant information but under the wrong class of interest.
- 7.3.2 Where the Monitoring Officer, after consultation with the Independent Person, considered that it would not be in the public interest to refer a technical but minimal breach to a Standards Panel, he/she will recommend to the parties that the matter be settled informally. Nonetheless, either party has the right to have the matter referred to a Panel for determination.

7.4 No breach

7.4.1 If the Investigation finds no breach of the code of conduct, and the Monitoring Officer considers – after consultation with the Independent Person – that there is no public interest in pursuing the matter further, he/she will contact both parties to ask if they accept the finding and are willing to end the matter there. If they respond in the affirmative, the Monitoring Officer will confirm to the parties in writing that the complaint will be taken no further. If either party rejects the finding or is not willing to conclude the matter, the complaint will be referred to the Standards Panel.

7.4.2 The Monitoring Officer may, having consulted the Independent Person, refer the complaint to the Standards Panel, even where the investigation finds no breach and the parties are willing to terminate the matter.

8. Standards Panel

8.1 As soon as reasonably practicable after referring a completed investigation to the Standards Panel for hearing and determination, the Monitoring Officer shall convene a meeting of the Panel.

8.2 The Monitoring Officer shall select the persons to comprise a Standards Panel, in accordance with the following criteria:

8.2.1 Membership of a Standards Panel is restricted to persons who –

- (a) are a member of Audit & Standards Committee; and
- (b) have attended the necessary training and re-training sessions specific to these Panels

8.2.2 The Panel shall consist of 3 or 5 elected members, appointed on a cross-party basis, plus one Independent Person who shall chair the Panel but not vote.

8.2.3 If more than the minimum number of qualified persons (pursuant to paragraph 8.2.1) are available for a particular Panel, selection will be based on (i) the criteria specified in 8.2.2 and (ii) in such a way that ensures a spread of experience across the Panel.

9. Arrangements for and Conduct of the Standards Panel Hearing

9.1 There is a presumption of openness with regard to Panel hearings. Hearings will be conducted in open session unless the Panel resolve that the public be excluded on one or more of the grounds permitted under Part VA of the Local Government Act 1972.

- 9.2 Where the hearing itself is open to the public, the Panel's deliberations following the hearing will be held in private.
- 9.3 Care is needed to ensure that the published report detailing the allegation and investigation does not unlawfully disclose personal or sensitive personal data of any party. Accordingly, the Monitoring Officer shall have discretion to redact material from the published report where necessary for data protection purposes.
- 9.4 Where the complaint concerns the use of an offensive word or expression, the wording will not be repeated in the Panel report more than is necessary and in any event placed within inverted commas, to indicate the words were those allegedly used by the subject member.
- 9.5 To coincide with the publication of the hearing report, the Council shall (unless the Panel is being advised to consider excluding the public from the hearing) issue a press release about the hearing, which shall include an explanation of the Independent Person's role. Advice will be sought from the council's Head of Communications as to the precise content of the release.
- 9.6 The Independent Person, in his/her capacity as Panel chair, may – after consulting the Monitoring Officer – issue directions as to the manner in which the hearing is to be conducted.
- 9.7 Adequate security must be in place throughout the hearing, to protect Panel members and other parties actively involved in the hearing against threats or intimidation.
- 9.8 Arrangements must be made to ensure the privacy of the Panel while in recess following the hearing.
- 9.9 Arrangements must enable the Panel to conduct their deliberations in recess without feeling pressurised to reach a decision within a set time.

10. Reaching a Decision

- 10.1 In accordance with statutory requirements, the voting members of the Panel must seek and take into account the views of the Independent Person before reaching their decision in respect of the allegation.
- 10.2 The Panel should, where possible, reach their decision by consensus and vote by acclamation. Where there is disagreement, the matter shall be put to a vote with Members voting for or against the proposal.
- 10.3 The decision of the majority of the Panel Members shall constitute the decision of the Panel. The Chair, being an Independent Person, shall not be permitted to vote or exercise a casting vote.

10.4 In the event that no majority decision can be reached (e.g. where one voting member felt unable to decide the allegation), the Panel will make no finding and a fresh Panel shall be appointed to re-hear the complaint.

10.5 The decision of the Panel should be owned collectively by all its Members and Panel Members should, as far as reasonably practicable, avoid statements or actions that undermine public confidence in the complaints process.

11. Range of decisions available to the Standards Panel

11.1 Having heard the allegation, the Standards Panel may –

- (i) find that the subject member **did fail** to comply with the council's code of conduct for members in one or more respects;
- (ii) find that the subject member **did not fail** to comply with the council's code of conduct for members;
- (iii) make no finding in respect of the allegation. It is open to the Panel merely to note the issues raised by the complaint and, if appropriate, to make recommendations which address them.

11.2 Even where the Panel finds a breach, it is not obliged to take action in respect of the member. In accordance with section 28(11) of the Localism Act, it must have regard to the failure in deciding *whether* to take action and, if so, what action to take.

11.3 Neither the Standards Panel nor any other body of the council has power to suspend or disqualify a member or to withdraw their basic or special responsibility allowance.

11.4 Actions the Panel may take in relation to a member who has failed to comply with the code of conduct include:

- (i) publishing its findings in respect of the member's conduct;
- (ii) writing a formal letter to the member, which could include recommended actions such as an apology;
- (iii) reporting its findings to Council for information; or recommending to Council that it takes one or more of the actions listed here;
- (iv) formal censure;

- (v) recommending to the member's Group Leader that he be removed from any or all of the council's committees or sub-committees;
- (vi) recommending that the Monitoring Officer offer appropriate training.

12. Publicising the Panel's Decision

At the end of the hearing, the Chair will state the decision of the Standards Panel as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Standards Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Standards Panel, send a copy to the complainant and the member, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Audit and Standards Committee.

13. Right of Appeal

- 13.1 Subject to paragraphs 13.2 to 13.4, the complainant and subject member may each appeal the decision of the Standards Panel.
- 13.2 A request for an appeal must be made in writing to the Monitoring Officer and set out reasons for the request, with reference to the grounds set out in paragraph 13.4.
- 13.3 The appeal request must be received by the Monitoring Officer within 10 working days of the original Panel hearing.
- 13.4 The appeal request will only be granted if one or more of the following criteria are met:
 - (i) the hearing was procedurally flawed; a relevant consideration was not taken into account; or an irrelevant consideration was taken into account;
 - (ii) new evidence or material has arisen with a direct and significant bearing on the allegation; or
 - (iii) the Panel's decision was irrational, meaning it was so unreasonable that no sensible Standards Panel, having applied its mind to the complaint, could have arrived at that decision.

- 13.5 The decision as to whether the appeal request does fulfil one or more of the above criteria, resulting in the request being granted, shall be in the sole discretion of the Monitoring Officer, in consultation with the Independent Person.
- 13.6 In the event that an appeal is granted, a Standards Panel composed of eligible members and an Independent Person, all of whom are different from those who ~~e-one-that~~ heard the original case, will consider the entire case. The appeal Panel may dismiss or uphold the appeal. If they uphold the appeal, they may substitute the original decision with a new decision. If the appeal Panel considers that essential information was not included in the investigation, they may refer the complaint back to the investigation stage.
- 13.7 There is no internal right of appeal from the decision of the appeal Panel.