

BURY METROPOLITAN BOROUGH COUNCIL

STANDARDS COMMITTEE

HEARING PROCEDURES

Introduction

This procedure is intended to provide the Standards Committee with an efficient and effective hearing process for the determination of any matter referred to the Committee. This will help the Committee to deal with all the issues that need to be resolved in a way that is fair to the Member and to any person who may be involved.

Interpretation

1. 'Committee' also refers to 'a Standards Sub-Committee' or any sub-committee or panel established to hear and determine any matter.
2. 'Investigator' means the Ethical Standards Officer (ESO) who referred the report to the Authority, and includes his or her nominated representative. In the case of matters that have been referred for local investigation, references to the Investigator mean (*subject to paragraph 3 below*) the Monitoring Officer or other investigating officer, and his or her nominated representative.
3. 'Legal Advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the Authority, or someone appointed for this purpose from outside the Authority.
4. 'Member' means the member of the Authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Member's nominated representative.
5. 'Model Code' means the Code of Conduct for Councillors and Voting Co-opted Members adopted by the Authority.

Representation

6. The Member may be represented or accompanied during the meeting by a solicitor, barrister or, with the permission of the Committee, another person.

Legal Advice

7. The Committee may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome. The substance of any

legal advice given to the Committee may be shared with the Member and the Investigator if they are present.

Setting the Scene

8. After all the members and everyone involved have been formally introduced, the Chair should explain how the Committee is going to run the hearing.

Preliminary Procedural Issues

9. The Committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Making Findings of Fact

10. After dealing with any preliminary issues, the Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigator's report.
11. If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.
12. If there is a disagreement, the Investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Committee may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator.
13. The Member should then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.
14. At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Member.
15. If the Member disagrees with most of the facts, it may make sense for the Investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
16. If the Member disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigator is not present, the Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee may then –

- (a) continue with the hearing, relying on the information in the Investigator's report,
 - (b) allow the Member to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary, or
 - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigator to be present if he or she is not already.
17. The Committee will usually move to another room to consider the representations and evidence in private.
18. On their return, the Chair will announce the Committee's findings of fact.

Did the Member fail to follow the Code?

19. The Committee then needs to consider whether or not, based on the facts it has found, the Member has failed to follow the Code of Conduct.
20. The Member should be invited to give relevant reasons why the Committee should not decide that he or she has failed to follow the Code.
21. The Committee should then consider any verbal or written representations from the Investigator.
22. The Committee may, at any time, question anyone involved on any point they raise in their representations.
23. The Member should be invited to make any final relevant points.
24. The Committee will then move to another room to consider the representations.
25. On their return, the Chair will announce the Committee's decision as to whether or not the Member has failed to follow the Code of Conduct.

If the Member has not failed to follow the Code of Conduct

26. If the Committee decides that the Member has not failed to follow the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the Authority.

If the Member has failed to follow the Code

27. If the Committee decides that the Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigator and the Member as to –
- (a) whether or not the Committee should set a penalty, and

- (b) what form any penalty should take.
28. The Committee may question the Investigator and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
 29. The Committee will then move to another room to consider whether or not to impose a penalty on the Member and, if so, what the penalty should be.
 30. On their return, the Chair will announce the Committee's decision.

Adjournment

31. *The Committee may at any stage prior to the conclusion of the hearing, adjourn the hearing and require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Committee. The Committee shall not adjourn a hearing more than once for this purpose*
32. *The Committee may, at any stage prior to the conclusion of the hearing, adjourn the hearing and make a written request, to the Ethical Standards Officer concerned, that the matter be referred back to the Ethical Standards Officer for investigation, indicating the Committee's reason(s) for making such request.*

Recommendations to the Authority

33. After considering any verbal or written representations from the Investigator, the Committee will consider whether or not it should make any recommendations to the Authority, with a view to promoting high standards of conduct among Members.

The Written Decision

34. The Committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision within two weeks after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

Admission of and disclosure of information to the media and public

35. *The hearing will normally be conducted in public (except when the Committee retires to consider any matter as prescribed in this procedure) unless the Committee is satisfied in accordance with the relevant provisions that it is appropriate for the Committee to exclude the press and public from any part of the proceedings, and resolves accordingly.*
36. *Any documents submitted to the Committee during or for the purposes of the hearing will normally be available for public inspection, along with the agenda*

for and minutes of the Committee meeting which constitutes the hearing, unless the Committee is satisfied in accordance with the relevant provisions that any such document (in whole or in part) should not be so disclosed, and resolves accordingly.

Regulations

37. *This procedure shall be applied subject to and in accordance with the Local Government Act 2000, Part III, any re-enactment thereof, and any regulation or order made thereunder.*
38. *Not all referrals from an Ethical Standards Officer will require investigation.*
 1. *Under the regulations, an Ethical Standards Officer could direct the Monitoring Officer to take some other form of action at local level other than investigation or determination. This is most likely to happen in situations where a case has broad relevance for the ethical governance of an authority. Examples include, making recommendations to the Standards Committee about wider issues for the authority raised by the case or ensuring that the parties concerned attempt some form of reconciliation.*
 2. *The Monitoring Officer must report back to the Ethical Standards Officer within 3 months of receiving the directions on the outcome of the actions taken or with details of the proposed actions to be taken.*
 3. *If the Ethical Standards Officer is not satisfied with the action taken or proposed to be taken, he may require the Monitoring Officer to arrange for the publication of a statement giving details of the direction and reasons for not fully implementing the direction.*