

BURY METROPOLITAN BOROUGH COUNCIL

STANDARDS COMMITTEE

PROCEDURE FOR LOCAL DETERMINATION OF ALLEGATIONS ABOUT THE PERSONAL CONDUCT OF COUNCIL MEMBERS

Introduction

1. The local determination of complaints by the Standards Committee of the Bury Metropolitan Borough Council, where the investigation has been completed by an Ethical Standards Officer (ESO) of the Standards Board for England, will be governed by this procedure. It applies to complaints about the conduct of signatories to the Bury Metropolitan Borough Council's Code of Conduct for Council Members. Such signatories include members and co-opted members with voting rights.
2. The person(s) making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member.
3. Where the Monitoring Officer takes on the role of the Investigator, she must arrange for a separate legal advisor to the Standards Committee in respect of the allegation.

Notifying the Member and Complainant

4. Within five working days of the receipt of the ESO's report by the Monitoring Officer, the Democratic Services Manager shall send a copy of the report to the Standards Committee, the Member and, where possible, the Complainant, making the provision of the report conditional upon an appropriate undertaking of confidentiality.
5. At the same time the Democratic Services Manager shall write to the Member (as per the attached draft letter) and enclose a copy of the Standards Committee "Pre-Hearing Procedures". He/she shall ask for a written response from the Member, within fifteen working days, stating whether or not he/she:

disagrees with any of the findings of fact in the ESO's report, including the reasons for any disagreements

wants to be represented, at their own expense, at the hearing by a solicitor, barrister or any other person

wants to give evidence to the Standards Committee, either verbally or in writing

wants to call relevant witnesses to give evidence to the Standards Committee

wants any part of the hearing to be held in private

wants any part of the ESO's report or other relevant documents to be withheld from the public

6. The Democratic Services Manager will also inform the Member that if, at the meeting of the Hearing Panel, he/she seeks to dispute any matter contained in the ESO's report, without having previously notified the Democratic Services Manager of their intention to do so, the Hearing Panel may either adjourn the meeting to enable the Investigator to provide a response, or refuse to allow the disputed matter to be raised.

7. Upon receipt, the Member's response shall be forwarded to the Investigator, who shall invite the relevant ESO to comment, within fifteen working days, on the Member's response, to say whether or not he/she:

wants to be represented at the hearing

wants to call relevant witnesses to give evidence to the Hearing Panel

wants any part of the hearing to be held in private

wants any part of the ESO's report or other relevant documents to be withheld from the public

8. Upon receipt of the ESO's response, the Democratic Services Manager will forward the responses of the Member and the ESO to the Chair of the Hearing Panel.
9. The Member, the ESO and the Investigator are entitled to request that any witnesses they want should be called. However, the Chair of the Hearing Panel may limit the number of witnesses, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Hearing Panel to reach its decision.
10. Nothing in this procedure shall limit the Chair of the Hearing Panel from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Hearing Panel to reach its decision.
11. The Chair of the Hearing Panel, in consultation with the Panel's legal advisor will then:

confirm a date, time and place for the hearing, which must be within three months from the date that the ESO's report was received

confirm the main facts of the case that are agreed

confirm the main facts that are not agreed

confirm which witnesses will give evidence

outline the proposed procedure for the hearing, specifying which parts, if any, will be considered in private and

request the Democratic Services Manager to provide this information, with the Agenda, to everyone involved in the hearing at least two weeks before the proposed date of the hearing

12. Where appropriate, a Member who wishes to make an oral representation to the Hearing Panel may arrange for support by a representative not directly involved in the matter.

The Hearing Panel

13. When the ESO's report is sent to the Standards Committee by the Monitoring Officer a sub-committee of the Standards Committee ('the Hearing Panel') shall be formed to consider the complaint and the report.
14. The Hearing Panel shall be chaired by an independent member selected by the Independent Members.
15. The Hearing Panel shall be composed of members of the Standards Committee chosen by the Chair of the Hearing Panel to consist of a majority of independent members.
16. The Hearing Panel will be composed of five members in total with a minimum of three independent members and two elected members from different political parties.
17. Where a member of the Hearing Panel is unable to attend a meeting of the Panel the Democratic Services Manager shall arrange for a substitute member of the Standards Committee to attend the meeting. The substitute member shall be briefed about the complaint under consideration by the Democratic Services Manager.
18. The Hearing Panel shall decide, on the balance of probability, whether the grounds of the complaint are upheld. It shall do so by considering the ESO's report and, where appropriate, written or oral representations made by the Member or the Complainant.

19. Each Hearing Panel member shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast. Abstentions shall not be permitted.
20. Administration for the hearing shall be carried out by the Democratic Services Manager and the hearing shall follow the "Hearing Procedure" (as attached).
21. The meeting of the Hearing Panel will be open to the public and press unless confidential information or exempt information under Schedule 12A of the Local Government Act 1972 and regulations is likely to be disclosed.

Procedure at the Hearing

22. The initial order of business at the meeting shall be as follows:

quorum for the Hearing Panel shall be three with a majority of independent members

declarations of interest

consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present

introductions

any representation from the Investigator and/or the Member as to reasons why the Hearing Panel should exclude the press and public and determination as to whether to exclude the press and public. Where the Hearing Panel decides that it will not exclude press and public, the Democratic Services Officer shall at this point provide copies of the agenda and reports to any members of the press and public who are present.

23. The purpose of the hearing is to test the robustness of the report of the investigation produced by the ESO, by examining the reasoning contained within the report and the quality of the evidence relied upon. This calls for an inquisitorial approach by the Hearing Panel based on seeking information in order to identify potential flaws in the report and to clarify issues. The Hearing Panel will control the procedure and evidence presented at the hearing, including the questioning of witnesses.
24. The Hearing Panel may at any time seek legal advice from its legal adviser. Such advice will on all occasions be given in the presence of the Investigator and the Member.
25. The procedure at the hearing is attached ("Hearing Procedure"), subject to the Chair of the Panel being able to make changes as he or she thinks fit in order to ensure a fair and efficient meeting.

26. Where appropriate the Investigator will make representations on behalf of the Complainant to the Hearing Panel.

Appeal

27. Where the Hearing Panel determines that the Member has failed to comply with the Code of Conduct the Monitoring Officer shall inform the Member of his or her right to appeal against the determination.

Notice of Findings

28. The Democratic Services Manager will make a short written decision available on the day of the hearing and a full written decision in draft will be prepared by the following day.
29. Within two weeks of the end of the hearing the Democratic Services Manager will circulate the full written decision, in the format recommended by the Standards Board, to the Member, the Complainant (where possible), the ESO concerned, the Standards Committee of Bury Metropolitan Borough Council and any other authority concerned.
30. At the same time the Democratic Services Manager shall arrange for a summary of the findings to be published in two newspapers circulating in the area of the Authority and on the Council's web site.
31. Where the Hearing Panel determines that there has not been a breach of the Code of Conduct, the notice specified in paragraph 29 shall
- i) state that the Hearing Panel found that the Member had not failed to comply with the Code of Conduct and shall give its reasons for reaching that finding; and
 - ii) not be published in local newspapers if the Member so requests.
32. Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice specified in paragraph 29 shall
- i) state that the Hearing Panel found that the Member had failed to comply with Code of Conduct but that no action needs to be taken in respect of that failure;
 - ii) specify the details of the failure;
 - iii) give reasons for the decision reached; and
 - iv) state that the Member concerned may apply for permission to appeal against the determination.

33. Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice specified in paragraph 29 shall
- i) state that the Hearing Panel found that the Member had failed to comply with the Code of Conduct;
 - v) give reasons for the decision reached;
 - vii) specify the sanction imposed, and
 - viii) state that the Member concerned may apply for permission to appeal against the determination.
34. Copies of the agenda, reports and minutes of a hearing, as well as any background papers, apart from sections of documents relating to parts of the hearing that were held in private, will be available in public inspection for six years after the hearing.

Confidentiality and Disclosure of Information

35. Where the Chair of the Hearing Panel considers that the ESO's report and/or any of the written statements in response is likely to disclose "exempt information" (as defined in Schedule 12A to the LGA 1972 and regulations), and in consequence that it is likely that the Hearing Panel will, during consideration of these papers, not be open to the public, he/she shall instruct the Democratic Services Manager to not provide copies of these papers to the press or public or permit their inspection by the press or public in advance of the meeting.
36. The Hearing will be held in public apart from the following two situations:
- Where 'confidential information' is to be revealed, the Hearing Panel must hold such parts of a meeting in private. Confidential information is information provided by a government department under the condition that it must not be revealed, and information that cannot be revealed under any legislation or by a court order.
- Where 'exempt information' is to be revealed the Hearing Panel may exercise their discretion in deciding whether or not to exclude the public. The categories of exempt information are set out in Schedule 12A to the LGA 1972 and regulations and include information relating to the personal circumstances of any person.