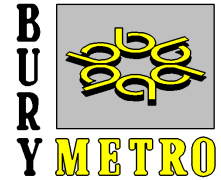


DRAFT

BURY METROPOLITAN BOROUGH COUNCIL



STANDARDS COMMITTEE

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

1. Introduction

- 1.1 This document contains procedures for dealing with complaints made regarding the personal conduct of Council Members, and updates the Council's procedures in light of the Standards Committee (England) Regulations 2008 which allow for local assessment of allegations about the conduct of Councillors.
- 1.2 There are three sections which deal with:-
 - i) Receiving and assessing complaints
 - ii) Reviewing Local Assessment Decisions
 - iii) Conducting Hearings following investigation.
- 1.3 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.

2. Receiving and Assessing Complaints

- 2.1 Allegations made by Complainants against Members will be addressed to the Council's Monitoring Officer who will present them for consideration to the Standards Referrals Sub-Committee.
- 2.2 The Member will be informed of the allegation unless it is determined by the Sub-Committee that the circumstances are such that it would be in the public interest not to provide such a summary. Such instances would be:
 - Where the disclosure of the Complainant's personal details or details of the allegation to the person who is the subject of the allegation, before the Investigating Officer has had the opportunity to interview the Complainant, may result in evidence being compromised or destroyed by the subject of the allegation.
 - Where there is the real possibility of intimidation of the Complainant or witnesses by the Member.

- 2.3 The 'Standards Referral Sub-Committee' will decide whether or not the complaint **appears** to show a breach of the Code and if it does, whether the complaint merits investigation.
- 2.4 Where the Sub-Committee determines that a complaint merits investigation, it will refer the matter to the Monitoring Officer who will make arrangements for an investigation to take place. However, the Monitoring Officer may be asked to deal with an allegation other than by investigation, (for example, by conciliation, training). Where the Sub-Committee determines to take no action, it must notify the Complainant as to the reasons.
- 2.5 In the following circumstances, the Monitoring Officer may refer an allegation back to the Standards Committee:-
- Where, during an investigation or following a referral for action other than investigation, evidence emerges that, in the Monitoring Officer's reasonable view, a case is materially either more serious or less serious than originally seemed apparent, which might mean that, had the Standards Committee been aware of that evidence, it would have made a different decision on how the matter should be treated;
 - Where a Monitoring Officer becomes aware of a further potential misconduct allegation which relates to the matter he or she is already investigating. In such circumstances, the Monitoring Officer may refer the matter back to the Standards Committee to decide on how the new matter should be treated;
 - Where the Member subject to the allegation has resigned, is terminally ill or has died.
- 2.6 Where the Standards Referrals Sub Committee deems it appropriate, it may refer cases to the Adjudication panel for England for determination.
- 2.7 Meetings of the Standards Referrals Sub-Committee will be held in private.

3. Reviewing Local Assessment Decisions

- 3.1 Where the Standards Referrals Sub-Committee determines that an allegation does not merit investigation, it will notify the Complainant as to the reasons.
- 3.2 The Complainant has a right to ask that the decision set out in 3.1 is re-considered. This will be done by the Standards Review Sub-Committee.
- 3.3 Meetings of the Standards Review Sub-Committee will be held in private.

4. Referral of Matters to the Monitoring Officer for Investigation

- 4.1 Where a matter is referred to the Monitoring Officer, she/he, (unless otherwise directed by an Ethical Standards Officer or Standards Committee), shall inform:

- a) the Member
- b) the Complainant
- c) the Standards Committee

that the matter has been referred for investigation.

4.2 The Monitoring Officer shall, in conducting an investigation, have regard to any relevant guidance and comply with any relevant direction given by the Standards Board.

4.3 On completion of an investigation the Monitoring Officer shall:

- a) make a finding that there either has or has not been a failure to comply with the code.
- b) prepare a written report of the investigation which contains a statement as to the finding.
- c) send a copy of that report to the Member.
- d) refer the report to the Standards Committee.

4.4 Where a matter is referred to the Monitoring Officer by an Ethical Standards Officer, the Monitoring Officer shall send a copy of the report received from the Ethical Standards Officer to the Member and after that Member has received the report refer it to the Standards Committee.

5 Conducting Hearings Following Investigation

5.1. Notifying the Member and Complainant

5.1.1 Within five working days of the receipt of the Investigator'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.

5.1.2 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 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 Hearing Sub-Committee either verbally or in writing
- Wants to call relevant witnesses to give evidence to the Sub-Committee
- Wants any part of the Hearing to be held in private
- Wants any part of the report or other relevant documents to be withheld from the public

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

5.1.4 Upon receipt, the Member's response shall be forwarded to the Investigator, who shall be invited 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 Sub-Committee
- Wants any part of the Hearing to be held in private
- Wants any part of the Investigator's report or other relevant documents to be withheld from the public

5.1.5 Upon receipt of the Investigator's response, the Democratic Services Manager will forward the responses to the Member and the Investigator to the Chair of the Hearing Panel.

5.1.6 The Member and the Investigator are entitled to request that any witnesses they want should be called. However, the Chair of the Hearing Sub-Committee 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 Sub-Committee to reach its decision.

5.1.7 Nothing in this procedure shall limit the chair of the Hearing Sub-Committee from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Hearing Sub-Committee to reach its decision.

5.1.8 The Chair of the Hearing Sub-Committee in consultation with the legal advisor will then:

- Confirm a date, time and place for the Hearing, which must be within three months from the date that the Investigator'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

5.1.9 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.

5.2 The Hearing Sub-Committee

5.2.1 The Hearing Sub-Committee shall decide, on the balance of probability, whether the grounds of the complaint are upheld. It shall do so by considering the Investigator's report and, where appropriate, written or oral representations made by the Member or the Complainant.

5.2.2 Each Hearing Sub-Committee shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast. Abstentions shall not be permitted.

5.2.3 Administration for the Hearing shall be carried out by the Democratic Services Manager and the Hearing shall follow the 'Hearing Procedure' (as attached).

5.2.4 The meeting of the Hearing Sub-Committee 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.

5.3 Procedure at the Hearing

5.3.1 The initial order of business at the meeting shall be as follows:-

- 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 Sub-Committee should exclude the press and public and determination as to whether to exclude the press and public. Where the Hearing Sub-committee 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.
- 5.3.2 The purpose of the Hearing is to test the robustness of the report of the investigation by examining the reasons contained within the report and the quality of the evidence relied upon. This calls for an inquisitorial approach by the Hearing Sub-Committee based on seeking information in order to identify potential flaws in the report and clarify issues. The Hearing Sub-Committee will control the procedure and evidence presented at the Hearing, including the questioning of witnesses.
- 5.3.3 The Hearing Sub-Committee 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.
- 5.3.4 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.
- 5.3.5 Where appropriate the Investigator will make representations on behalf of the Complainant to the Hearing Sub-Committee.
- 5.4. **Appeal**
- 5.4.1 Where the Hearing Sub-Committee 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.
- 5.5 **Notice of Findings**
- 5.5.1 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.
- 5.5.2 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 Investigating Officer, the Standards Committee of Bury Metropolitan Borough Council and any other authority concerned.
- 5.5.3 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.
- 5.5.4 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 Sub-Committee 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.

5.5.5 Where the Hearing Sub-Committee 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 Sub-Committee 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.

5.5.6 Where the Hearing Sub-Committee 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 Sub-Committee found that the Member had failed to comply with the Code of Conduct;
- ii) give reasons for the decisions reached;
- iii) specify the sanction imposed; and
- iv) state that the Member concerned may apply for permission to appeal against the determination.

5.5.7 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.

5.6 Confidentiality and Disclosure of Information

5.6.1 Where the Chair of the Hearing Sub-Committee considers that the Investigator'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 Sub-Committee 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.

5.6.2 The Hearing will be held in public apart from the following two situations:

- Where 'confidential information' is to be revealed, the Hearing Sub-Committee 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 Sub-Committee 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 LGA 1972 and regulations and include information relating to the personal circumstances of any person.