

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. NOTIFYING THE MEMBER OF THE COMPLAINT

A Member against whom a complaint is made will be notified as to who has made an allegation and the nature of it. Where a complainant has serious concerns about his/her name or the details of the complaint being released, they must set out the reasons why on the complaint form. The request for confidentiality will then be considered by the Standards Referrals Sub-Committee.

3. RECEIVING AND ASSESSING COMPLAINTS

- 3.1 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.
- 3.2 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. The Standards Board recommend that Standards Committees set out assessment criteria to determine whether they

will investigate a complaint or direct that some form of alternative action be taken. Suggested criteria are set out in Appendix 1.

3.3 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, at this stage, to deal with an allegation other than by investigation, (for example, by conciliation or training). Where the Sub-Committee determines to take no action, it must notify the Complainant as to the reasons.

3.4 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 the 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.

3.5 Where the Standards Referrals Sub Committee deems it appropriate, it may refer cases to the Adjudication panel for England for determination.

3.6 Meetings of the Standards Referrals Sub-Committee will be held in private.

4. REVIEWING LOCAL ASSESSMENT DECISIONS

4.1 Where the Standards Referrals Sub-Committee determines that an allegation does not merit investigation, it will notify the Complainant as to the reasons.

4.2 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.

4.3 Meetings of the Standards Review Sub-Committee will be held in private.

5. REFERRAL OF MATTERS TO THE MONITORING OFFICER FOR INVESTIGATION

5.1 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.

5.2 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.

5.3 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.

5.4 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.

6 CONDUCTING HEARINGS FOLLOWING INVESTIGATION

6.1. Notifying the Member and Complainant

6.1.1 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.

6.1.2 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

6.1.3 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.

6.1.4 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

6.1.5 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.

6.1.6 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.

6.1.7 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.

6.1.8 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

6.1.9 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.

6.2 **The Hearing Sub-Committee**

6.2.1 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.

6.2.2 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.

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

6.2.4 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.

6.3 **Procedure at the Hearing**

6.3.1 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.

6.3.2 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.

6.3.3 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.

6.3.4 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.

6.3.5 Where appropriate the Investigator will make representations on behalf of the Complainant to the Hearing Sub-Committee.

6.4. **Appeal**

6.4.1 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.

6.5 **Notice of Findings**

6.5.1 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.

6.5.2 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.

6.5.3 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.

6.5.4 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.

6.5.5 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.

6.5.6 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.

6.5.7 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.

6.6 Confidentiality and Disclosure of Information

6.6.1 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.

6.6.2 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.

GUIDANCE FOR THE STANDARDS REFERRAL SUB-COMMITTEE**1.0 BACKGROUND AND CONTEXT****1.1 Irrelevant Complaints**

It is likely that complaints will be received which do not relate to the Code of Conduct for members. Such complaints might include complaints relating to the provision of services by the Council or the manner in which matters have been dealt with by the Council which should properly be dealt with through the Council's Corporate Complaints Procedure. They may be matters relating to other authorities or matters relating to a members private life which do not therefore fall within the remit of the Standards Committee.

Such complaints will not be referred to the Standards Referral Sub-Committee but will instead be dealt with by the Monitoring Officer who, if appropriate, will refer it to the appropriate avenue for further consideration.

1.2 Local Resolution

The Standards Committee is acutely aware that investigations are costly and time consuming. Moreover complaints can often be dealt with more effectively if an early resolution of the matter can be achieved.

The Standards Committee would therefore encourage complainants to explore whether the matter can be resolved locally prior to a formal written complaint being made to the Standards Committee.

2.0 INITIAL TESTS

Before the assessment of a complaint begins, the Standards Referral Sub-Committee should be satisfied that the complaint meets the following tests: -

- (a) Is the complaint about the conduct of a member?

(The complaint must relate to one or more named elected or co-opted members serving on Bury Council)

- (b) Was the named member in office at the time the alleged misconduct took place?
- (c) Was the Code of Conduct in force at the time the alleged misconduct took place?
- (d) If the complaint is proven, would there be a breach of the Code under which the member was operating at the time of the alleged misconduct?

If the complaint fails one or more of these tests it cannot be investigated and no further action will be taken.

3.0 SUFFICIENCY OF INFORMATION

The complainant must provide sufficient information to enable the Standards Referral Sub-Committee to conclude that there is “prima facie” (at first sight) evidence of a breach of the Code of Conduct. If insufficient information is available, the Sub-Committee will not normally refer the complaint for investigation or other action.

4.0 SERIOUSNESS OF THE COMPLAINT

The Sub-Committee will not normally refer a matter for investigation or other action where the complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat.

5.0 LENGTH OF TIME WHICH HAS ELAPSED

The Assessment Sub-Committee will have regard to the length of time which has elapsed since the events which are the subject of the complaint occurred. It will not normally investigate or pursue other action where the events took place more than 6 months prior to the complaint being submitted other than in exceptional circumstances (for example, where the conduct relates to a pattern of behavior which has recently been repeated).

6.0 PUBLIC INTEREST

The Sub-Committee will determine whether the public interest would be served by referring a complaint for investigation or other action. They may consider that the public interest would not be served where a member has died, resigned or is seriously ill. Similarly if a member has offered an apology or other remedial action they may decide that no further action should be taken.

Similarly, if the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or the subject of an investigation by other regulatory authorities, it is unlikely that it will be referred for investigation or other action unless it is evident that the public interest will be served by further action being taken.

7.0 ANONYMOUS COMPLAINTS

Anonymous complaints will not normally be entertained unless there is additional documentary evidence to support the complaint.

8.0 MULTIPLE COMPLAINTS

It is not uncommon that one event may give rise to similar complaints from a number of different complainants. Whenever possible these complaints will be considered at the same meeting of the Sub-Committee. However each complaint will be separately considered.

9.0 CONFIDENTIALITY

As a matter of fairness and natural justice, a member should usually be told who has complained about them. There may be occasions where the complainant requests that their identity is withheld. Such a request should only be granted in circumstances that the Sub-Committee consider to be exceptional, for example: -

- (a) the complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed
- (b) the complainant is an officer who works closely with the member and they are afraid of the consequences to their employment if their identity is disclosed

10.0 WITHDRAWING COMPLAINTS

A complainant may ask to withdraw their complaint before the Sub-Committee has made a decision on it. The Sub-Committee will have to decide whether to grant the request.

For example, the Sub-Committee may consider the following: -

- (a) Does the public interest in taking some action outweigh the complainants request to withdraw the complaint?
- (b) Could action, such as an investigation, be carried out without the complainants participation?
- (c) Is there a reason why the complainant has been asked to withdraw the complaint? (For example, have they been pressurised by the member against whom the allegation has been made?)

**LOCAL ASSESSMENT OF STANDARDS COMPLAINTS
STANDARDS REFERRAL SUB-COMMITTEE**

To comprise: 1 independent Member to act as chair, together with two other members of the Standards Committee, at least one of whom must be an elected member.

REMIT

1. To consider written allegations that an elected or co-opted member of Bury Metropolitan Borough Council has failed to comply with the relevant Code of Conduct and to do one of the following: -
 - (i) refer the allegation to the Monitoring Officer with an instruction that she/he arrange a formal investigation of the allegation
 - (ii) refer the allegation to the Monitoring Officer directing that she/he arrange training, conciliation or such appropriate alternative steps as permitted by Regulations

(NOTE: the Sub-Committee should consult with the Monitoring Officer before taking this step.)
 - (iii) refer the allegation to the Standards Board for England.
 - (iv) decide that no action should be taken in respect of allegation or
 - (v) where the allegation is in respect of a person who is no longer a Member of the Authority, but is a member of another relevant authority (as defined in section 49 of the Local Government Act 2000) refer the allegation to the Monitoring Officer of that other relevant authority

and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the member concerned of that decision.

2. The Sub-Committee shall state its reasons for its decision.

QUORUM

The quorum for a meeting of the Sub-Committee shall be 3 Members, with an independent Member as chairman and at least one elected Member.

FREQUENCY OF MEETINGS

As and when necessary to assess written complaints.

STANDARDS REVIEW SUB-COMMITTEE

To comprise: 1 independent Member to act as chair, together with two other members of the Standards Committee, at least one of whom must be an elected member.

PROVIDED THAT no Member shall sit on a Review Sub-Committee if they have participated in a Standards Referrals Sub-Committee to consider the complaint which is subject to review.

PURPOSE

The purpose of the Standards Review Sub-Committee is to review, on the request of the complainant, a decision by the Standards Referrals Sub-Committee to take no action in respect of the allegation.

REMIT

1. To review the decision of the Standards Referrals Sub-Committee to take no action in respect of a complaint and to do one of the following: -
 - (i) to refer the allegation to the Monitoring Officer with an instruction that she/he arrange a formal investigation of the complaint
 - (ii) to refer the allegation to the Monitoring Officer directing that she/he arrange training, conciliation or such appropriate alternative steps as permitted by Regulations.

(NOTE: the Sub-Committee should consult with the Monitoring Officer before taking this step)
 - (iii) refer the allegation to the Standards Board for England
 - (iv) decide that no action should be taken in respect of the allegation; or
 - (v) where the allegation is in respect of a person who is no longer a Member of the Authority, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000) refer the allegation to the Monitoring Officer of that other relevant authority and shall instruct the Monitoring Officer to take reasonable steps to notify the person making the allegation and the Member concerned of that decision.
2. The Sub-Committee shall state its reasons for its decision.

QUORUM

The quorum for a meeting of the Sub-Committee shall be 3 Members, with an independent Member as Chairman, and at least one elected member.

FREQUENCY OF MEETINGS

As necessary, to enable it to review any decision of the Standards Referrals Sub-Committee to take no action within 3 months of the receipt of the request for such a review from the person who made the allegation.