



**PROCEDURE FOR
DEALING WITH COMPLAINTS OR
ALLEGATIONS AGAINST BOARD
DIRECTORS**

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1. INTRODUCTION

This guidance describes the procedure that will be followed by the Ethics & Standards Committee when hearing allegations. The procedure is designed to ensure that the Ethics & Standards Committee has an effective, fair and transparent hearing process and to assist Board Members who are the subject of a complaint. The procedure is the same for all Board Members and co-opted Members and mirrors that being used by the Council.

2. GENERAL INFORMATION

2.1 Definitions

- **Member** means a BHP Board Member or Sub Committee Member or voting co-opted member. All are subject to this procedure.
- **Investigator** means the person appointed to investigate the allegation.
- **Suspended** means suspended from being a Member of the Board for the period specified by the Managing Director and Council Representative. This means being suspended from being a member of the main Board or any of its sub committees.
- **Committee Adviser** means the Company Secretary or other person appointed to advise and guide the Ethics & Standards Committee on the procedures to be followed in an investigation.

2.2 The role of the Committee Adviser

In advising the Ethics & Standards Committee the role of the Committee Adviser is to:

- make sure that members of the Committee understand what they can and can't do.
- make sure the procedure is fair and will allow the allegation to be dealt with as efficiently and effectively as possible;
- make sure that the Board Member who is the subject of the allegation understands the procedures to be followed;
- provide advice to the Committee during the hearing and their deliberations; and
- help the Committee produce a written decision and a summary of that decision.

2.3 Seeking advice or guidance from the Committee Adviser

Ordinarily the Committee Adviser (usually the Company Secretary) is available for all Board Members who need advice or guidance. However, where a Board Member is the subject of an allegation which has been referred to the Ethics & Standards Committee the Company Secretary may provide advice on the procedure and will be available to discuss the Pre-Hearing Summary and other documents but may decline to give any other advice if he or she feels it would be inappropriate to do so.

2.4 Council Board Members

As set out in the Code of Conduct, in cases where the allegation refers to a Council Board Member who may also be in breach of the Council's Code of Conduct, BHP will not undertake an investigation or hearing until notified of the outcome of the Council's own investigation. This does not prevent a Council Board Member being suspended from the Board.

2.5 Representation for Board Members

A Board Member who is the subject of the allegation may be represented or accompanied by another person during any interviews and/or at the hearing although this is not essential. In the event that the person representing the Board Member is not a solicitor or barrister then permission will be required from the Ethics & Standards Committee at the start of the hearing. This will be dealt with as a preliminary matter. Permission will usually be given but may be withheld or withdrawn if, for example, the representative is directly involved in the matter being determined or if the Committee reasonably considers that the representative has or will be likely to disrupt or otherwise hinder the conduct of the interview/hearing or is unwilling or unable to follow the procedural rules.

If permission is likely to be withdrawn at any time by the Ethics & Standards Committee, then an appropriate warning will be given before permission is withdrawn. A member may be represented by another person at any interviews that take place with the Investigator before the hearing.

2.6 Reopening the investigation

The Ethics & Standards Committee should not re-open the investigation into the allegation. However, the Board Member who is the subject of the allegation has the right to give evidence to the Ethics & Standards Committee and, if more evidence becomes available after the completion of the investigation, the Ethics & Standards Committee may consider that evidence during the course of the hearing.

2.7 Agenda

The agenda for a meeting of the Ethics & Standards Committee when a hearing is held shall be sent to members of the committee at least five working days before the meeting is held.

3. PROCEDURE PRIOR TO THE HEARING

3.1 Notification of investigation report

Upon receipt of a completed investigation report from the Investigator into an allegation of misconduct the Committee Adviser shall send a copy to the Board Member who is the subject of the complaint and to the members of the Ethics & Standards Committee. The Committee Adviser will also send to the Board Member this guidance note which provides advice on the procedure to be followed before, during and after the hearing.

3.2 Written response from Board Member

The Committee Adviser shall at the same time (but having consulted with the Chair of the Ethics & Standards Committee) notify the Board Member of the proposed hearing date and shall request from the Board Member concerned a written response to the Investigator's report. The response shall be provided within 10 days from the date of the letter from the Committee Adviser or such longer period as he or she may allow. A form will be sent to the Board Member on which he or she can respond in writing. If no response is received the procedure will continue. The form provides guidance on what is meant by a 'finding of fact' and allows the Board Member to say:

- whether the proposed hearing date is acceptable.
- which findings of fact in the report from the Investigator he or she disagrees with, if any, and in what respect. If the board member does not notify the Committee Adviser of the findings of fact with which he or she disagrees then the Board Member may not be permitted to raise them at the hearing stage.
- whether the Board Member feels he or she has breached the code of conduct and, if not, why.
- whether the Board Member has or would be willing to give an apology and/or undergo any training or conciliation.
- whether the Board Member will be attending the hearing and/or whether he or she intends to submit only written representations.
- whether the Board Member would like to be represented by a solicitor or barrister or other person.
- whether the Board Member would like to call any witnesses and, if so, to provide the name and contact details for those witnesses and a brief description of the evidence each witness will give.

- whether the Board Member will be asking the committee to consider any documentary or other written evidence and, if so, to provide copies with the response form.
- whether the Board Member would like the hearing to be held in private and, if so, the reasons for the request.
- any comments or questions on the proposed procedure.
- whether the Board Member would wish to have any documents withheld from the public and, if so, the reasons for the request.
- in the event that the Board Member does not intend to attend the hearing, the representations he or she would like to have placed before the Committee.
- anything else the Board Member would like to add.

3.3 Written response from Investigator

Upon receipt of the Board Member's response, the Committee Adviser shall forward a copy to the Investigator together with an appropriate form (see **Reply Form B**) inviting him or her to comment within 10 days (or such longer period as he or she may allow) on:

- the response provided by the Board Member and whether the Investigator is able to accept any of the points raised in it.
- whether he or she will be attending the hearing and/or whether he or she intends to be represented by a solicitor or barrister or other person.
- whether he or she would like to call any witnesses and, if so, to provide the name and contact details for those witnesses and a brief description of the evidence they will give if different to the summary of their evidence in the Investigator's report.
- whether he or she will be asking the Committee to consider any documentary or other written evidence (other than the report of the investigation) and, if so, to provide copies with the response form.
- whether he or she thinks the hearing should be held in private and, if so, the reasons why.
- whether he or she would wish to have any documents withheld from the public and, if so, why.
- any comments or questions on the proposed procedure.
- anything else he or she would like to add.
- whether he or she would recommend interim suspension from the Board pending a full hearing.

3.4 Scheduling the meeting and agreeing preliminary matters

Upon receipt of the Investigator's response, the Committee Adviser shall, in consultation with the Chair of the Ethics & Standards Committee, confirm the date, time and place for the hearing, which must be within 4 weeks from the date that the Investigator's report was

received (but which may not be until 14 days after the date on which the Committee Adviser sent the Investigator's report to the Board Member unless the Board Member agrees). However if the Investigator recommends suspension in the interim until the full hearing has been carried out, the Committee Adviser will arrange for a meeting of the Committee within 5 working days of receiving such a recommendation.

The Committee Adviser will ask the Chair for his or her thoughts on:

- whether the Board Member should be entitled to be represented by the person named by him or her (if not a solicitor or barrister).
- whether the Board Member and/or the Investigator should be entitled to call all or only one or more of the witnesses named in their responses.
- whether the Committee itself will require any witnesses to attend and, if so, who.
- whether the hearing is likely to be held in private and whether any documents should be withheld from the public.

but a decision on these matters will be made by the Ethics & Standards Committee at the hearing. An indicative view may be given by the Committee Adviser in the Pre-Hearing Summary.

3.5 Pre-Hearing Summary

The Committee Adviser will write to the relevant parties no later than 2 weeks before the hearing date and will send to them a report (a 'Pre-Hearing Summary') setting out the following:

- the name of the Board Member who is the subject of the allegation.
- the name of the Complainant (unless in very special circumstances the Committee Adviser considers that the name of the Complainant should not be revealed)
- the name of the Investigator
- the name of the Chair of the Committee that will determine the allegation
- the name of the Committee Adviser or other officer appointed to act in his her place
- the date of the Pre-Hearing Summary
- the date, time and place of the hearing
- a summary of the allegation
- the findings of fact which are not agreed, if any, and the reasons for that disagreement
- an explanation of those parts of the BHP's Code of Conduct which are alleged to have been breached
- whether the Board Member has acknowledged the breach
- whether the Board Member has agreed to give an apology and/or to undergo any training or conciliation
- a list of persons expected to attend the meeting, including any witnesses who have been invited to attend

- whether a limitation is likely to be placed on the number of witnesses who may be called
- whether the person named by the Board Member as his or her representative (if not a solicitor or barrister) is likely to be permitted to act as the Member's representative
- a list of documents to be considered by the Committee including any written representations which the Board Member has asked to be placed before the Committee (copies of the documents will be enclosed if possible but in any event will be sent to the parties prior to the hearing)
- a list of any documents that will be withheld from the public
- whether the meeting is likely to be held in private
- guidance on the procedure to be followed

3.6 Request for alternative date

Any objection to the proposed hearing date must be immediately notified in writing to the Committee Adviser. The Committee Adviser will act reasonably in considering any requests for an alternative hearing date but is not obliged to re-schedule the hearing. The Committee Adviser will consult with the Chair before re-scheduling the meeting.

3.7 Disputes on the Pre-Hearing Summary

If having received the Pre-Hearing Summary the Board Member disagrees with any part of it he or she shall immediately give notice of the disputed issues to the Committee Adviser. The Board Member should then seek to resolve the disputed issues with the Committee Adviser prior to the hearing. If necessary, the Board Member should contact the Committee Adviser to arrange a convenient time to meet the Committee Adviser to discuss the issues. This meeting must take place before the hearing and should be convened as soon as possible in order to allow sufficient time to resolve any disputes prior to the hearing. Any unresolved issues will be dealt with as a preliminary matter at the hearing. Failure to notify the Committee Adviser of any issues of dispute or any failure to attempt to resolve those issues with the Committee Adviser prior to the hearing may mean that the Ethics & Standards Committee may decline to listen to the Board Member's views on the disputed issues at the hearing.

4. THE HEARING PROCEDURE

4.1 Quorum

The quorum for the meeting shall be 3 (one from each form of membership on the Board).

4.2 Absent Member

If the Board Member who is the subject of the allegation is not present at the time the hearing is due to start the Chair will ask the Committee Adviser whether the Board Member has provided any reasons for his or her non-attendance. If the Committee is satisfied with such reasons, it shall adjourn to another date. If the Committee is satisfied that the Board Member received adequate notice of the hearing and either no reasons for the Board Member's non-attendance were given or the Committee considers the reasons given to be inadequate then the Committee shall decide whether to proceed with the hearing in their absence or adjourn to another date.

4.3 Chair to deal with preliminary matters

At the start of the hearing, the Chair will deal with the following preliminary matters:

- Introductions of all persons present.
- Any declarations of interest.
- Confirmation that the committee is quorate.
- Whether the parties have received guidance on the procedure to be followed at the hearing.
- An explanation of the procedure to be followed (the Chair may invite the Committee Adviser to explain the procedure).
- Whether any issues or disagreements on the Pre-Hearing Summary including any outstanding issues on the procedure to be followed should be heard by the Committee. The Committee may decline to listen to the views of the Board Member in relation to any disputes on the procedure or the Pre-Hearing Summary if the Board Member has failed to raise them with the Committee Adviser prior to the hearing or has failed to attempt to resolve them with the Committee Adviser prior to the hearing.

The Committee will then consider and vote upon:

- whether all or any part of the hearing should be conducted in private (the press and public will be refused access where it is likely that confidential or exempt information will be disclosed in the course of the hearing).
- whether, acting reasonably, a limit should be placed on the number of witnesses which the Board Member will be entitled to call and if so, how many. This may be, for example, if the Committee feels that witnesses will simply repeat earlier evidence or if their evidence is not relevant.
- whether the Board Member is entitled to be represented by the person nominated by him or her (if not a barrister or solicitor).

- whether, acting reasonably, the Committee should consider any disputed issues on the Pre-Hearing Summary despite failure of the Board Member to resolve such issues with the Committee Adviser as set out in paragraph 3 above.

4.4 Explanation of Pre-Hearing Summary

The Chair will ask the Committee Adviser to present the Pre-Hearing Summary. As a copy would have already been sent to the parties this requirement can be dispensed with if the Committee, Board Member and Investigator agree.

4.5 Presentation of Report by Investigator

If the Investigator or his or her representative is attending the hearing the Chair will invite him or her to present his or her findings to the Committee (both as to findings of fact and as to whether, in the Investigator's view, there has been a breach of the Board Members Code of Conduct).

4.6 Presentation by Member

If the Board Member is represented, only the Board Member or his or her representative may address the Committee at a time or at any particular stage.

The Chair will ask the Board Member or his or her representative whether he or she agrees the findings of fact. If the Board Member does so then the Chair will move on to address whether there has been a breach of BHP's Code of Conduct and will invite the Board Member to address that issue. If the Board Member disagrees with any findings of fact the Chair will invite the Board Member or his or her representative to address both findings of fact and whether there has been a breach of the Code of Conduct. In either case the Board Member or his or her representative will be permitted to respond to any evidence given by the Investigator or his or her witnesses.

Except with the permission of the Committee the Board Member will not be entitled to raise any disputes on any findings of fact other than those in respect of which notice has already been given to the Committee Adviser in accordance with paragraph 2 above.

If the Board Member does seek to raise disputes on any findings of fact which have not already been notified by him or her to the Committee Adviser, the Committee will decide whether to permit the Board Member to raise those issues. The Committee will consider whether the Board Member had good reason for failing to notify the Committee Adviser of the disputed issues prior to the meeting.

If the Committee is not satisfied that the Board Member has submitted sufficient reasons for failing to notify the Committee Adviser of the disputed findings of fact prior to the hearing the hearing shall proceed and the findings of fact in question shall stand.

If the Committee is satisfied that the Board Member had good reasons for failing to notify the Committee Adviser of the disputed facts prior to the hearing the Chair will ask the Committee Adviser or the Investigator whether he or she is able to deal with them. If not, the hearing shall be adjourned. If he or she can deal with them then the hearing shall proceed and the disputed facts in question will be dealt with.

4.7 Witnesses

At any stage during their presentations, the Investigator and the Board Member may call the witnesses identified in the Pre-Hearing Summary. Any witnesses not named in the Pre-Hearing Summary may be called only with the agreement of the Committee.

4.8 Questions

A party wishing to challenge any part of the presentations including any oral evidence will, with the permission of the Chair, be permitted to ask questions of the person making the presentation or giving evidence as the case may be and shall do so at the conclusion of the oral evidence or, in the case of the person making the presentation, at the conclusion of the presentation.

Any member of the Committee will be permitted to ask questions at any point with the permission of the Chair.

The Committee Adviser may ask questions of the Board Member or the Investigator or any witness if he or she thinks the question may assist the Committee in reaching a decision.

4.9 Closing Remarks and final questions

The Chair will invite the Investigator and then the Board Member, or his or her representative, to make any closing remarks.

The Chair will invite the Committee Adviser to summarise the main issues in the dispute and either the Chair or, at his or her invitation, the Committee Adviser will explain the next stage of the procedure.

4.10 Deliberations

The members of the Committee shall then retire to a separate room together with the Committee Adviser to consider in private, firstly the

findings of fact and, secondly, whether based on what they have read and heard they feel that the Board Member failed to comply with the Board Members' Code of Conduct. The Committee shall seek to reach a unanimous decision but if that is not possible than the decision shall be reached by a simple majority. In the case of an equality of votes the Chair shall have a second or casting vote. The assessment of weight and credibility is for the Committee Members alone to decide.

The Committee, Board Members and any representatives and the Committee Adviser shall return to the main meeting room and the Chair shall explain their decision to those present.

4.11 Findings

The Chair shall firstly explain the Committee's findings of fact and shall then explain whether those findings led the Committee to conclude that there was a breach of the Board Members' Code of Conduct.

The Committee shall make one of the following findings:

- (a) that the Board Member had not failed to comply with the Board Members' Code of Conduct;
- (b) that the Board Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of the matters which were considered by the Committee;
- (c) that the Board Member had failed to comply with the Code of Conduct and that a sanction should be imposed.

4.12 Finding of no evidence of breach or no action necessary

If the Committee finds no evidence of any breach of the Code of Conduct or if it finds that there is a breach but no further action is required to be taken then no further action shall be taken save that the Chair may set out any recommendations which the Committee feels should be made to the full BHP Board with a view to maintaining high standards of conduct. The Chair will seek the views of the Board Member and Committee Adviser before the Committee makes any such recommendations.

4.13 Finding of breach of the Code of Conduct

If the Committee finds that the Board Member did breach the Code of Conduct, the Chair will invite the Committee Adviser to explain to those present what sanctions are available to the Committee. The Committee Adviser will also describe what sanctions have been imposed by the

Committee at previous hearings (if any). The sanctions which are available to the Committee are set out in the Table below.

4.14 The sanctions

- i Recommendation by the Committee to the full Board for removal of the Board Member including immediate suspension.
- ii Recommendation by the Committee to the full Board for removal of the Board Member without immediate suspension.
- iii Suspension of the Board Member for a maximum period of three months or until such time as he or she submits a written apology or undertakes any training or conciliation specified by the Committee

If the Investigator or his or her representative is present the Chair shall invite him or her to make any comments on the sanction to be imposed.

The Chair will then invite the Board Member to respond to the comments from the Investigator or the Committee Adviser.

The Committee Members shall then retire to a separate room so that the Committee can consider in private:-

- i whether to impose a sanction (although there may be evidence of a breach the Committee may decide in some cases that no further action needs to be taken);
- ii where a sanction is to be imposed -
 - (a) what that sanction should be; and
 - (b) when that sanction should commence, how long it should be for, whether the sanction should be suspended and, if so, in what circumstances; and
- iii any recommendations which the Committee considers it should make to the full BHP Board or any other person or body.

4.15 Conclusion of hearing

At the conclusion of their deliberations, the committee members shall return to the main meeting room and the Chair shall then state the decision on the above matters. If necessary, the Chair will explain to the Board Member that a right of appeal to the Director of Housing at Brent Council can be made. The Chair will formally close the hearing.

4.16 Notice of Findings

The Committee Adviser shall prepare a short written notice of the decision and the reasons for that decision which he or she shall send to the Board Member as soon as possible after the close of the hearing. This will also include guidance on how to appeal, if necessary.

Within two weeks after the hearing, the Committee Adviser shall prepare a full written decision of the Standards & Ethics Committee and shall send it to the following people:

- the Board Member
- the Investigator
- the members of the Committee
- the person who made the allegation

Where the Committee finds that there has been a failure to comply with the Code of Conduct but that no action needs to be taken in respect of that failure then the full report shall state that fact and shall also state the details of the failure and the reasons for the Committee's finding.

Where the Committee finds that there has been a failure to comply with the Code of Conduct then the full report shall state that fact and shall also state the details of the failure, the reasons for the Committee's finding and the sanction to be imposed.

5. GUIDANCE ON DECIDING THE APPROPRIATE SANCTION

5.1 Introduction

When deciding a penalty, the Standards Committee should make sure that it is reasonable and in proportion to the Board Member's behaviour. Before deciding what penalty to set, the Ethics & Standards Committee should consider the following questions, along with any other relevant information:

- What was the Board Member's intention? Did the Board Member know (or should reasonably have known) that he or she was failing to follow BHP's Code of Conduct?
- Did the Board Member get advice from officers before the incident? Was that advice acted upon in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
- What was the result of failing to follow the Code of Conduct?

- How serious was the incident?
- Does the Board Member accept he or she was at fault?
- Did the Board Member apologise to the relevant people?
- Has the Board Member previously been warned or reprimanded for similar misconduct?
- Has the Board Member failed to follow the Code of Conduct before?
- Is the Board Member likely to do the same thing again?
- Are there any decisions made by other Ethics & Standards Committees that are relevant?
- Are there any other factors that need to be considered?
- Are there any cost implications for BHP e.g. the cost of arranging training or conciliation?

5.2 When may suspension be appropriate?

Suspension may be appropriate for more serious cases. For example (but not limited to) cases involving:

- trying to gain an advantage or disadvantage for themselves or others;
- dishonesty or breach of trust.

6. FULL WRITTEN DECISION FORMAT

For consistency and thoroughness, the full written decision of the Committee will usually follow a standard format. The report will include basic information about the allegation and the decision, namely:

- the name of the Board Member who the allegation has been made about
- the name of the person who made the original allegation (unless there are good reasons for keeping his or her identity confidential)
- the name of the Ethics & Standards Committee member who chaired the hearing

- the names of the Ethics & Standards Committee members who took part in the hearing
- the name of the Committee Adviser and any other officers present
- the names of all other people present
- the date of the hearing; and
- the date of the report.

The report should then also give the following further details about the allegation and the findings made at the hearing:

- a summary of the allegation
- the relevant section or sections of the Code of Conduct
- a summary of the evidence considered and representations made
- the findings of fact, including the reasons for them
- the finding as to whether or not the Board Member failed to follow the Code of Conduct, including the reasons for that finding
- the penalties applied, if any, including the reasons for any penalties and in the cases of a suspended penalty, an explanation of what steps need to be taken by the Board Member if they are to avoid the sanction coming into effect; and
- the right to appeal.

7. ACCESS TO THE HEARING AND DOCUMENTS

7.1 Access to Information Rules

BHP's Access to information Rules apply to the Ethics & Standards Committee.

7.2 Whether the hearing should be held in private

There is a presumption that hearings should be held in public. There are two circumstances in which hearings (or parts of hearings) must or may be held in private:-

A hearing must be held in private where this is necessary to prevent *confidential* information being revealed. Confidential information means

information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.

A hearing may be held in private if it is likely that the following information may be revealed to the public.

- Information relating to the personal circumstances of any person

In the case of exempt information it is a matter for the Committee to decide whether the meeting should be held in private. In reaching their decision the Committee should carefully consider any decision to hold any part of the meeting in private.

7.3 Withholding documents from the press and public

The Access to Information Rules do not relate only to public attendance at hearings. They also establish the general principle that the agenda and reports to be discussed should also be available for public inspection before and during a hearing. Copies of the agenda, reports and minutes of a hearing, as well as any background papers, must be available for public inspection.

Normally, the agenda and reports for a meeting must be made available to the public before the meeting. However the Committee Adviser in consultation with the Managing Director may wish to prevent any part of a report being made public if it relates to a part of the meeting which, in his or her opinion, is likely to be held in private.

7.4 Confidentiality

Members are reminded of the importance of maintaining confidentiality in respect of confidential or exempt material.