

## Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 11 September 2008.

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### Subject:

Pre Investigation Local Filter

### Summary statement:

This report sets out how the Pre-investigation Filter Process is to be applied. The Committee is asked to consider the procedure and comment on the guidance document.

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Suzan Hemingway  
Assistant Director Corporate Services  
(City Solicitor)  
Report Contact: Suzan Hemingway  
Phone: (01274) 433696  
E-mail:  
[suzan.hemingway@bradford.gov.uk](mailto:suzan.hemingway@bradford.gov.uk)



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Suzan Hemingway, Assistant Director Corporate Services (City Solicitor)



## 1. **Summary**

This report sets out how the Pre-investigation Filter Process is to be applied. The Committee is asked to consider the procedure and comment on the guidance document.

## 2. **Background**

2.1 From May 2008 complaints about the conduct of a Councillor are referred to the Standards Committee of the Local Authority for their consideration.

The Standards Committee can only deal with issues covered by the Members Code of Conduct.

2.2 The Standards Board for England have produced guidance to assist members in undertaking the local assessment of complaints. A copy of their guidance is available on their website.

2.3 In addition the document at Appendix A is designed to assist Hearings Panels in applying the local filter to specific complaints received.

2.4 The purpose of the initial assessment of a complaint is simply to decide whether any action should be taken either as an investigation or some other action. The Hearings Panel makes no finding of fact at this stage of the procedure.

## 3. **Other considerations**

3.1 Standards Committee members are invited to consider the document at Appendix A and discuss whether it will assist Hearings Panels in dealing with local assessment of complaints and specifically the local filter effectively. Standards Committee member are invited to make comments on the document attached.

## 4. **Options**

4.1 The Committee is asked to consider the attached document and to either:

- Approve the document as drafted
- Suggest amendments to the draft document

## 5. **Financial and resource appraisal**

5.1 There are no financial implications in terms of approval of this document.

## 6. **Legal appraisal**

6.1 The document is provided to assist sub committees and ensure they have a consistent and robust procedure for dealing with the local filter.

## 7. **Recommendations**

7.1 Standards Committee is recommended to consider the document attached and to suggest appropriate amendments.

10. **Appendices**

10.1 Appendix A – Member Code of Conduct – Complaints Procedure  
Criteria for consideration when undertaking local filter.

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## **Member Code of Conduct – Complaints Procedure**

### **Criteria for consideration when undertaking local filter**

The Hearing Panel needs to consider **on every occasion** the following extract from the Council's Constitution when undertaking the local filter of complaints:

The Constitution specifies at Paragraph 15.2 that "All decisions of the Council will be made in accordance with the following principles:

- due regard to all relevant considerations and disregard to all irrelevant factors;
- proportionality (ie the action must be proportionate to the desired outcome);
- lawfulness and financial propriety and prudence;
- all due consultation;
- the taking of professional advice from officers;
- respect for human rights and the application of the Human Rights Act 1998 as may be amended from time to time;
- a presumption in favour of openness;
- clarity of aims and desired outcomes;
- the ability to explain the options considered and the reasons for the decisions;
- And such other considerations as are appropriate and relevant."

The purpose of the initial assessment decision, known as the local filter, is simply to decide whether any action should be taken on the complaint – either as an investigation or some other action. The Panel makes no findings of fact.

### **The Process for undertaking local filter**

The purpose of the local authority is to determine whether the Standards Committee can deal with the complaint. The Committee can decide to:

- Investigate the complaint
- Take some other action

- Send it to the Standards Board for England to investigate
- Send it to the Standards Committee for another authority if the Member belongs to that Authority, or one of the parish or town councils that come under it
- Take no further action.

Before assessment of a complaint begins the Panel should be satisfied that the complaint meets the following tests:

1. Is it a complaint against one or more named members of the Authority or an authority covered by the Standards Committee?
2. The named member was in office at the time of the alleged conduct and the code of conduct was in force at the time.
3. The complaint if proven would 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 as a breach of the Code, and the Complainant must be informed that no further action will be taken in respect of the complaint.

If the complaint satisfies the above tests the Hearings Panel must consider the criteria set out in paragraph 1 below.

If having considered the criteria the Panel is satisfied that further action is required they should consider whether there are reasons why the matter ought to be referred to the Standards Board for England as set out in Paragraph 2 below.

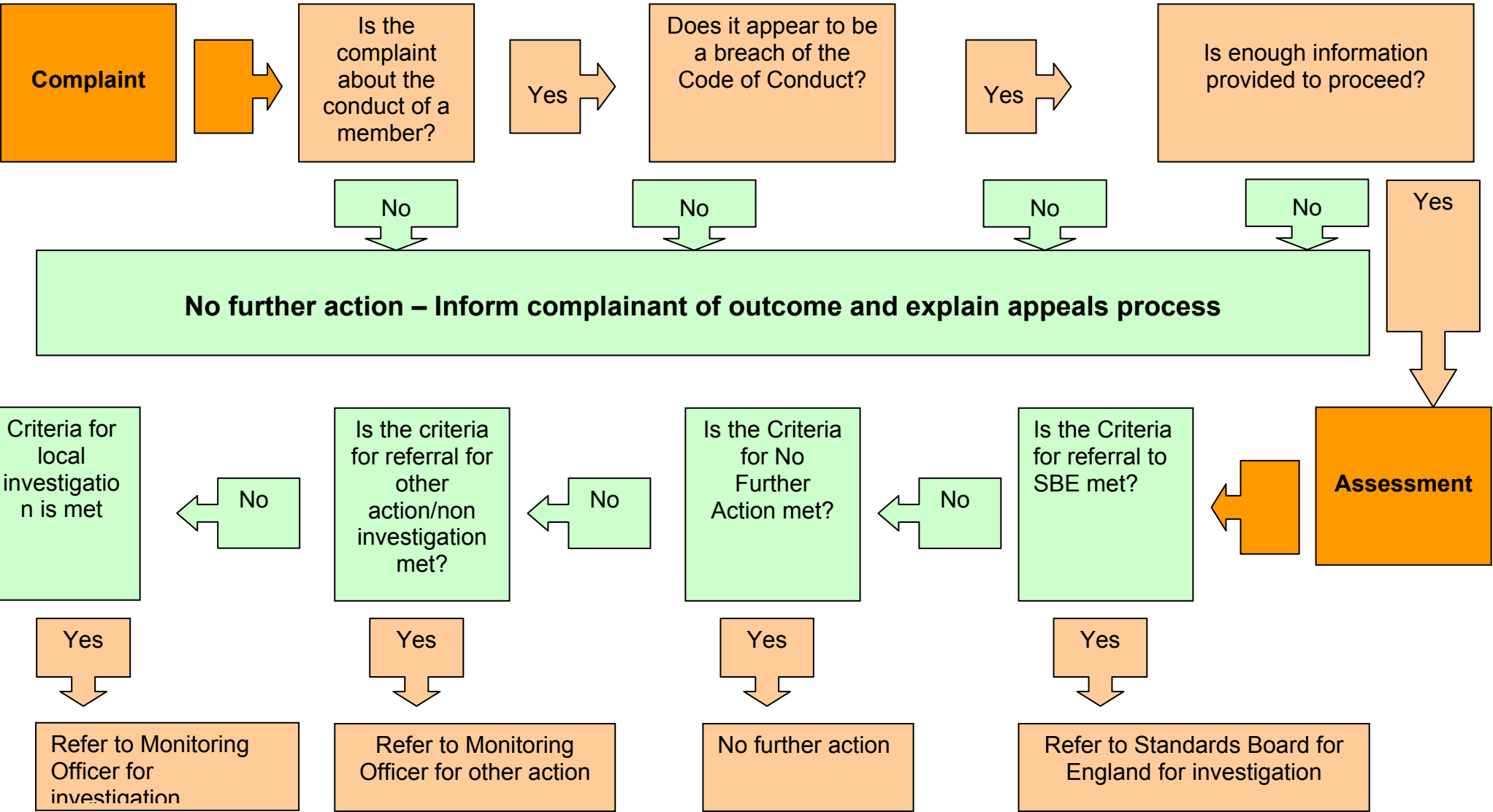
If the Panel is satisfied that the matter is suitable for local determination then it must consider whether the nature of the complaint is such that no action should be taken as set out in Paragraph 3 below.

If the Panel is satisfied that some action is required it must consider whether it is appropriate to refer the complaint for other action as set out in Paragraph 4 below.

If the Panel is satisfied that the criteria in Paragraphs 3 and 4 are not met then the matter should be referred for local investigation under Paragraph 5 below.

The following flow chart sets out the procedure detailed above.

# LOCAL FILTER COMPLAINT HANDLING CHART



## **1. CRITERIA FOR DEALING WITH COMPLAINTS RECEIVED**

**The Panel needs to consider the following issues in deciding how to deal with all complaints received:**

- The Panel must bear in mind the importance of ensuring that complainants are confident that complaints about Member conduct are taken seriously and dealt with appropriately.
- Panel must also bear in mind that deciding to investigate a complaint or to take other action will cost both public money and the officers' and elected members' time.
- The Panel must be satisfied that it has sufficient information to make a decision (as to what option it chooses to dispose of the complaint).
- If the complaint is about someone who is no longer a Member of Bradford Council or of a Parish or Town Council, but who remains a member of another authority, the Panel must consider if it wishes to refer the complaint to the Monitoring Officer of that other authority.

## **2. CRITERIA FOR REFERRING MATTERS TO THE STANDARDS BOARD FOR ENGLAND**

**The Panel must consider the following issues in deciding whether to refer a complaint to the Standards Board for England for investigation:**

- 2.1 The status of the member or members who have been complained about, or the number of members about whom the complaint is made.
- 2.2 Whether the member is a group leader, elected leader or mayor, a member of the authority's executive or standards committee, and if so, whether the status of the complainant or complainants would make it difficult for the standards committee to deal with the complaint.
- 2.3 Whether there is potential conflict of interest of so many members of standards committee that it could not properly monitor the investigation, if undertaken by the Monitoring Officer.
- 2.4 Whether there is a potential conflict of interest of the monitoring officer or other officers, and that suitable alternative arrangements cannot be put in place to address that potential conflict.

- 2.5 Whether the complaint is so serious or complex, or involves so many members, that it cannot be handled locally.
- 2.6 Whether the complaint will require substantial amounts of evidence beyond that available from the authority's documents, its members or officers.
- 2.7 Whether the complainant alleges substantial governance dysfunction in the authority or its standards committee.
- 2.8 Whether the complaint relates to long-term or systemic member/officer bullying which could be more effectively investigated by someone outside the authority.
- 2.9 Whether the complaint raises significantly or unresolved legal issues on which a national ruling would be helpful.
- 2.10 Whether the perception of the public might be that the authority has an interest in the outcome of a complaint (for example if the authority could be liable to judicial review if the complaint is upheld).
- 2.11 Whether there are any exceptional circumstances which would prevent the authority or its standards committee investigating the complaint competently, fairly and in a reasonable period of time, or it would be unreasonable for local provision to be made for an investigation.
- 2.12 If the Panel believes that a complaint should be investigated by the Standards Board, it must refer the matter to the Standards Board, along with the relevant paragraph or paragraphs of the Code of Conduct, together with the reasons why the complaint cannot be dealt with locally.

### **3. CRITERIA FOR CONSIDERING THAT NO ACTION SHOULD BE TAKEN**

**The Panel must consider the following criteria in considering whether to take no action upon receipt of a complaint:**

- 3.1 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 or statutory authorities including the Ombudsman, the Panel must consider whether it wishes to add to the investigations held and what benefit or value for money would be gained by further action.
- 3.2 The Panel must consider the date of the alleged incident giving rise to the complaint and consider whether any benefit



would now be derived from taking action, given the length of time since the event and the date of the alleged incident.

- 3.3 The Panel must consider whether a complaint is trivial, malicious, politically motivated, less serious, vexatious or tit-for-tat such that further action is not warranted.
- 3.4 The Panel must consider whether the complaint has been made anonymously. If so, the Panel should only refer such a complaint for investigation or other action if it is accompanied by documentary or photographic evidence indicating that the matter is exceptionally serious.

#### **4. REFERRAL FOR OTHER ACTION**

**The Panel must consider the following issues in deciding whether to refer a matter to the Monitoring Officer for other action:**

- 4.1 When the Panel considers a complaint (either an Individual complaint or a series of complaints), it may decide that other action, not an investigation should be taken, and it will instruct the Monitoring Officer to carry this out. In making this decision, the Panel must consider the practicalities of the situation, taking into account the needs of the authority and of parish and town councils within the District.
- 4.2 It is not possible to set out all the circumstances where other action may be appropriate but the Panel must consult the Monitoring Officer before reaching a decision to take other action.
- 4.3 If the Panel decides to propose that a complaint should be dealt with through referral to the Monitoring Officer for other action, the parties involved will be asked to confirm in writing that they will co-operate with the process proposed. The Monitoring Officer will write to the relevant parties outlining:
  - What is being proposed
  - Why it is being proposed
  - Why they should co-operate
  - What the Panel hopes to achieve.
- 4.4 If any of the relevant parties decline to co-operate, then the Sub-Committee will be notified and reconsider the complaint but exclude the possibility of referring the matter to the Monitoring Officer for other action.

## **5. REFERRAL FOR LOCAL INVESTIGATION**

**A Panel may decide to refer a complaint to the Monitoring Officer for investigation. The Monitoring Officer must investigate the complaint and refer the outcome of the investigation to the Hearings Panel for investigation.**

## **6. DEALING WITH REQUESTS THAT THE NAME OF THE COMPLAINANT SHOULD NOT BE DISCLOSED**

**The Panel must consider the following criteria in considering whether to take a decision not to name a complainant.**

- 6.1 The starting point is that in the interests of fairness and natural justice, Members/ Councillors who are complained about have a right to know who has made the complaint, and be provided with a summary of the complaint.
- 6.2 Complainants can make a request for confidentiality but this will not automatically be granted. The Panel will consider whether there is a good reason to withhold the identity or the details of a complainant.
- 6.3 The Panel will consider the request for confidentiality and any information provided in support, alongside details of the complaint and decides whether to grant the request. It will give reasons for its decision.
- 6.4 If the request for confidentiality is not granted, the Panel will normally allow a complainant to withdraw a complaint.
- 6.5 In exceptional circumstances the Panel may have no choice but to disclose a complainant's personal and complaint details, and proceed with an investigation (or other action). This will only be the case if the allegation(s) made are very serious and the Panel will provide its reasons to the complainant for making this decision.

## **7. CRITERIA FOR THE REVIEW PANEL**

**The Review Panel must apply the same criteria used for the initial assessment of complaints, and requests that the name of the complainant should not be disclosed as set out above, and has the same options in dealing with a complaint as the Assessment Panel.**

- 7.1 There may be cases where further information is made available in support of a complaint that changes its nature or gives rise to a potential new complaint. In such cases, the review Panel must consider carefully if it is more appropriate to pass this to the

Assessment Panel to be handled as a new complaint. If the Review Panel so decides, the Review Panel will decide that the review request has not been granted.

- 7.2 The Review Panel must take into account the views of the complainant if the complainant alleges:
- not enough emphasis has been given to a particular aspect of the complaint
  - there has been a failure to follow any published criteria
  - there has been an error in procedures
- 7.3 If more information or new information of any significance is available to the Review Panel, and this information is not merely a repeat complaint, the Review Panel must consider whether the additional or new information means that the matter should be treated as a new complaint rather than a request for review. If the Review Committee decides that it is more appropriate to pass the matter to the Assessment Panel to be handled as a new complaint, the Review Panel will decide that the review request has not been granted.