

## **PROCEDURE FOR DEALING WITH COMPLAINTS – Local Assessment**

### **INTRODUCTION**

1. The purpose of this procedure is to explain how a complaint about a breach of the Members' Code of Conduct by an elected or co-opted member of Crawley Borough Council will be dealt with.

The process of dealing with complaints at a local level should be the same for all Subject Members, no matter what political party or what level of local government they represent.

When determining a complaint, the Standards Committee and its Sub-committees should be recognised as truly fair and politically unbiased, so that the public and the Authority have confidence in its procedures and findings.

The Monitoring Officer will try and resolve the complaint informally if possible. If this is not possible, or if the Complainant indicates that they do not wish this option to be pursued, the complaint will be handled in accordance with this Procedure.

### **INTERPRETATION**

2.
  - (a) 'Assessment Sub-committee' means the sub-committee established by the Standards Committee for the purposes of the initial assessment of the allegation/complaint;
  - (b) 'Authority' means the Crawley Borough Council,
  - (c) 'The Council' means Crawley Borough Council;
  - (d) 'Code of Conduct' means the code adopted by the Council
  - (e) 'Complainant' means the person(s) who made the allegation/complaint;
  - (f) 'ESO' means the Ethical Standards Officer of the Standards for England or his/her nominated representative;
  - (g) 'Investigating Officer' means the Monitoring Officer or the person appointed by the Monitoring Officer to undertake the investigation into an alleged breach of the Code of Conduct;
  - (h) 'Monitoring Officer' means the person designated as such by the Council or any other person nominated by the Monitoring Officer as his/her deputy;
  - (i) 'Review Sub-committee' means the Sub Committee established by the Standards Committee for the purpose of reviewing the Assessment Committee's decision that no action be taken on the complaint;
  - (j) 'SFE' means the Standards for England;
  - (k) 'Standards Committee' means the Standards Committee established by the Council;
  - (l) 'Subject Member' means an elected Member or a voting co-opted Member of the Council who is the subject of the complaint.

## RECEIVING COMPLAINTS AND INITIAL HANDLING

3. Complaints should be in writing on the appropriate Complaints Form (A copy is annexed to this procedure) which can be found on the Council's website or can be obtained from the Monitoring Officer on 01293 438292 or from the address below.
4. Alternatively, written complaints will also be accepted (by letter, email or fax) if the following information is included:
  - (a) the name, address and contact details of the complainant;
  - (b) whether the complainant is a member of the public, a fellow member, a Council officer or is making the complaint in some other capacity;
  - (c) who the complaint is about;
  - (d) details of the alleged incident including, where possible, dates, witness details and other supporting information.

5. The complaint should be sent in writing to:

Peter Nicolson  
Chair of the Standards Committee  
c/o Ann Maria Brown  
Head of Legal and Democratic Services and Monitoring Officer  
Crawley Borough Council  
Town Hall, The Boulevard  
Crawley, West Sussex  
RH10 1UZ

or by fax to 01293 438605 or by e mail to [Ann-Maria.Brown@crawley.gov.uk](mailto:Ann-Maria.Brown@crawley.gov.uk).

6. The Assessment Sub-committee will deal only with complaints about the alleged behaviour and conduct of the Subject Member. It will not deal with complaints about any of the Council's departments, services or matters not covered by the Code of Conduct.
7. Any written communications received by the Chairman of the Assessment Subcommittee that appear in any way to contain allegations that a Subject Member has failed, or may have failed, to comply with the Code of Conduct will, on receipt, be referred to the Monitoring Officer.

The Monitoring Officer's role on receipt of written complaints

8. The Monitoring Officer may at his/her discretion; try to resolve complaints informally if possible. (refer to the introduction section of this Procedure) If the complaint is addressed in writing to the Monitoring Officer instead of the Chairman of the Assessment Sub-committee, the Monitoring Officer will decide whether the complaint should be submitted to the Sub-committee or whether another course of action is appropriate. If the complaint is clearly not about a Subject Member's conduct, then the Monitoring Officer will not submit the complaint to the Assessment Subcommittee, but will decide whether the complaint is of such a nature as to be dealt with through other channels e.g. another complaints procedure, the police, external auditor etc or whether any action needs to be taken at all.
9. The Complainant may, in the first instance, raise their concerns with the Monitoring Officer verbally. In such cases, the Monitoring Officer will ascertain whether they want to formally submit their complaint in writing to the Assessment Sub-committee. If they do not, then the Monitoring Officer may at his/her discretion, consider the options for informal resolution, if any.

10. Before referring the complaint to the Assessment Sub-Committee, the Monitoring Officer will write to the complainant, acknowledging receipt of their complaint and, subject to the Monitoring Officer being satisfied that no restrictions apply on disclosure under Section 63 of the Local Government Act 2000 (as modified) and that there are no Data Protection Act 1998 implications, the Monitoring Officer will write to the member the subject of the complaint stating:
- (a) that a complaint has been made against them;
  - (b) the name of the complainant (unless the complainant has asked for their name to be kept confidential (paragraphs 12-15 of this procedure refers)
  - (c) the relevant paragraphs of the Code of Conduct it is alleged they have breached;
  - (d) that the complaint will be considered by the Assessment Sub-Committee and the date of this meeting, if known; and
  - (e) that a written summary of the complaint may be provided to them by the Assessment Sub-Committee

unless, in her opinion, it would be contrary to public interest or might prejudice the proper investigation of the complaint.

11. If Officers are unable to understand the information submitted by the Complainant, they will contact the Complainant for clarification of the Complaint. The time limits for decision making i.e. within 20 days of the receipt of the Complaint will apply at the point at which the Complainant clarifies the Complaint.

#### **ANONYMOUS COMPLAINTS**

12. Anonymous complaints may be received by the Assessment Sub-Committee. In such circumstances the complaint will not be referred for investigation or some other action unless it includes relevant documentary and/or photographic evidence indicating an exceptionally serious or significant failure to comply with the Code of Conduct.
13. The complainant's name will be made available to the Member the subject of the complaint unless there are very exceptional circumstances, and a summary of the complaint may be sent to the Member the subject of the complaint.
14. The exceptional circumstances could be where:
- The complainant has reasonable grounds for believing that they will be at risk of some form of reprisal, intimidation or physical harm if their identity is disclosed;
  - The complainant is an officer who works closely with the member the subject of the complaint and is concerned about the possible consequences to their employment or job if their identity is disclosed;
  - The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed.

However, every request for confidentiality will be treated on its own merits.

15. In certain cases, such as allegations of bullying, revealing the name of the complainant may be necessary for the investigation of the complaint. In such cases, the complainant may also be given the option of requesting a withdrawal of their complaint. When considering request for confidentiality, the Assessment Sub-Committee should also consider whether it is possible to investigate the complaint without making the complainant's identity known. If the Assessment Sub-Committee decides to refuse a request by a complainant for confidentiality, it may wish to offer the complainant the option to withdraw, rather than proceed with their identity being disclosed. However, in

certain circumstances, the public interest in proceeding with an investigation may outweigh the complainant's wish to have their identity withheld from the member the subject of the complaint.

### **WITHDRAWING COMPLAINTS**

16. There may be occasions when the complainant asks to withdraw their complaint prior to the Assessment Sub-Committee having made a decision on it. The Assessment Sub-Committee will need to decide whether to grant the request and should apply the following non-exhaustive considerations in dealing with such request:
- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
  - Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
  - Is there an identifiable underlying reason for the request? For example, is there information to suggest that the complainant may have been pressured by the member the subject of the complaint, or an associate of theirs, to withdraw the complaint?

If in the Monitoring Officer's opinion one or more of the criteria identified above applies, the Monitoring Officer on a written report will refer the Complainant's request to the Assessment Sub-committee or Standards Committee (which ever meeting is the earliest) for confirmation that the complaint be withdrawn.

### **JURISDICTION TESTS**

17. The Monitoring Officer will undertake a jurisdictional check on receipt on the complaint (i.e. if the complaint does not relate to a member who was in office at the date of the incident, it will be rejected). The Monitoring Officer will consult with the Chair and Vice Chair of the Standards Committee before rejecting any complaint.

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

- The complaint is against one or more named members of the authority;
- The named member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- 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, no further action will be taken by the Assessment Sub-Committee.

No findings of fact are made by the Assessment Sub-Committee

## **PRE-ASSESSMENT REPORTS AND ENQUIRIES**

18. The Monitoring Officer, or an officer instructed by the Monitoring Officer, shall prepare a short summary of a complaint for the Assessment Sub-Committee to consider. Such a summary should include the following information:-
- Whether the complaint is within the Assessment Sub-Committee's jurisdiction;
  - The paragraphs of the Code of Conduct that the complaint might relate to; or the paragraphs that the complainant has identified
  - A summary of the key aspects of the complaint
  - Any further information which has been obtained by the Monitoring Officer or nominated officer to assist the Sub-Committee which may include a copy of the subject member's declaration of acceptance of office form and undertaking to observe the Code, minutes, extracts from the register of interests, information from Company's House or the Land Registry.
19. Whilst the Monitoring Officer may also contact complainants for clarification of their complaint, pre-assessment enquiries should not be carried out in such a way as to amount to an investigation. The Monitoring Officer should not seek opinions on the allegation but only factual information. Similarly, the report ought not to set out a view on the matter which could improperly influence the Sub-Committee or lead to an impression being given that it is an officer decision.

## **ASSESSMENT SUB-COMMITTEE**

20. The Assessment Sub-Committee will consider the complaint without the presence of the public, the complainant or the member the subject of the complaint.

### **Considering the Complaint and making a decision**

21. The Assessment Sub-committee must deal with each complaint on a case by case basis on its own merits, having regard to any SFE guidance and advice from the Monitoring Officer and any relevant criteria and factors that the Standards Committee may determine from time to time.

Having assessed the Complaint the Assessment Sub-committee must take one of the decisions referred to in Paragraph 22 of this Procedure.

The Assessment Sub-Committee must record the main points it considered, its conclusion and the reasons for its conclusion.

In considering allegations received, the Assessment Sub-Committee will take the relevant factors into account:

- (a) Whether the information provided is sufficient to make a decision as to whether the complaint should be referred for investigation or other action. If not, unless or until further information is received, the Assessment Sub-Committee will not take further action on this complaint.
- (b) Where the complaint is about someone who is no longer a member of the Council, but is a member of another authority, the complaint will be referred to the Standards Committee of that authority to consider, unless it is considered inappropriate to do so.

- (c) Where the complaint has already been the subject of an investigation by the Standards Board for England or a Standards Committee or other investigation by other regulatory authorities and there is nothing to be gained by further action being taken, no further action will be taken.
- (d) Where the period of time that has passed since the alleged conduct occurred is such that there would be little benefit in taking action at the time of consideration of the complaint for investigation or further action, the Sub-Committee may conclude that, in the circumstances of the matter, no further action is warranted.
- (e) Where the matter is not considered sufficiently serious to warrant further action, no further action will be taken.
- (f) Where the matter appears to be simply malicious, politically motivated or tit-for-tat, and not sufficiently serious, the Sub-Committee may consider that no further action is warranted.
- (g) Where an anonymous complaint is received, it should only be referred for investigation or some other action if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

## **DECISION MAKING**

- 22. The Assessment Sub Committee and Review Sub-committee may reach one of the following decisions:
  - (1) Refer the Complaint to the Monitoring Officer for investigation i.e. the Assessment Sub-committee/Review Sub-committee is satisfied that if the Complaint were to be proven to justify the range of sanctions available to the Standards Committee, there would be a breach of the Code and that it is appropriate to investigate it.
  - (2) refer the matter to Standards for England (SFE) if it appears to be a serious case;
  - (3) request the Monitoring Officer to take other action, other than an investigation for example, conciliation between the complainant and the member the subject of the complaint, mediation, mentoring, or arrange training for the member on the Code of Conduct, or changes to the Authority's procedure
  - (4) decide to take no action on the complaint, for example, if it appears not to be a breach of the Code or it is a trivial matter; or
  - (5) refer the complaint to another public authority if the member the subject of the complaint has ceased to be a member of the Borough Council but is a member of another public authority.
- 23. The purpose of the initial assessment decision or review is simply to decide whether any action should be taken on the complaint either through investigation or some other action. The Assessment Sub-committee and Review Sub-committee make no findings of fact. If the Assessment Sub-committee or Review Sub-committee refers the complaint to the Monitoring Officer for investigation or other action, it does not mean that the Sub-committee has made up its mind about the complaint. It simply means that the Sub-committee believes the alleged conduct, if proven, may amount to a failure by the Subject Member, to comply with the Code of Conduct and that some action needs to be taken in response to the complaint.
- 24. The Assessment Sub-Committee should complete its initial assessment of an allegation within 20 working days of receipt. A notice of the decision of the Assessment Sub-Committee, with reasons, will be sent to the complainant and to the member the subject of the complaint within five working days of the decision being made.

25. If the Assessment Sub-Committee decides that no action will be taken on the complaint, the complainant can ask for a review of that decision. The request must be received by the Monitoring Officer in writing within thirty days of the date of the Notice of the Assessment Sub-Committee's decision. The request should state the reasons for the review.

### **LOCAL INVESTIGATIONS AND LOCAL DETERMINATIONS**

26. If the Monitoring Officer is directed to undertake an investigation, there is a separate procedure governing this process. This procedure can be found on the Council's Web site

### **REFERENCES TO STANDARDS FOR ENGLAND (SFE)**

27. In most cases, the Assessment/Review Sub-committee will be able to deal with alleged Member mis-conduct complaints. However, in some instances, there may be public interest considerations which make it difficult for the Sub-committee to deal with the issues.
28. In deciding whether to refer the case to the Standards for England, the Assessment Sub-Committee is advised that the Standards for England will take the following matters into account in deciding which cases they should accept in the public interest:
- Does the Standards Committee believe that the status of the member(s), or the number of members about whom the complaint is made would make it difficult for them to deal with the complaint? For example, is the member a group leader, Mayor or a member of the authority's Cabinet or Standards Committee?
  - Does the Standards Committee believe that the status of the complainant(s) would make it difficult for the Standards Committee to deal with the complaint? For example, is the complainant a group leader, Mayor or a member of the authority's Cabinet or Standards Committee, the Chief Executive, Monitoring Officer or other senior officer?
  - Does the Standards Committee believe that there is a potential conflict of interest of so many members of the Standards Committee that it could not properly monitor the investigation?
  - Does the Standards Committee believe that 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 the conflict?
  - Is there substantial governance dysfunction in the authority or its Standards Committee?
  - Is the case so serious or complex, or involving so many members, that it cannot be handled locally?
  - Will the complaint require substantial amounts of evidence beyond that available from the authority's document, its members or officer?
  - Does the complaint relate to long-term or systematic member/officer bullying which could be more effectively investigated by someone outside of the authority?
  - Does the complaint raise significant or unresolved legal issues on which a national ruling would be helpful?
  - Might the public perceive the authority to have an interest in the outcome of a case? For example if the authority could be liable to be judicially reviewed if the complaint is upheld.

- Are there exceptional circumstances which would prevent the authority or its Standards Committee investigating the complaint competently, fairly and in a reasonable period of time or meaning that it would be unreasonable for local provision to be made for an investigation?
29. The Standards for England will normally inform the Monitoring Officer within ten working days whether they will accept a case or whether they will refer it back to the Standards Committee, with reasons for doing so. There is no appeal mechanism against this decision by the Standards for England.

### **REFERRAL OF THE COMPLAINT TO ANOTHER AUTHORITY'S STANDARDS COMMITTEE**

30. If the complaint is about a Subject Member who is no longer a Borough Councillor or Co-opted Member, but who is a member of another authority, the Assessment Sub-committee or Review Sub-committee will instruct the Monitoring Officer to refer the complaint to the standards committee of that other authority. The referral will be made within 5 working days of the Sub-committee's decision.

### **REFERRALS TO THE MONITORING OFFICER FOR OTHER ACTION**

31. The suitability of the Assessment Sub-committee or the Review Sub-committee referring the complaint to the Monitoring Officer 'for other action,' will be dependant on the nature of the complaint and this may be the simplest and most cost effective way of resolving the issues. The Assessment Sub-committee or the Review Sub-committee need to be satisfied that even if the specified complaint had occurred as alleged, it would not be behaviour which would necessarily require the imposition of a sanction by the Hearing Sub-committee, following an investigation. The Assessment Sub-committee or the Review Sub-committee should also be satisfied that other action could assist the proper functioning of the Authority.

'Other action' is an alternative to investigation and may be appropriate where:

- (a) the Subject Member appears to have a poor understanding of the Code of Conduct and/or related Authority procedures;
- (b) there appears to be a breakdown in relationships;
- (c) the conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct;
- (d) the conduct complained of appears common to a number of members of the Authority, demonstrating a lack of awareness, experience or recognition of the particular provision(s) of the Code of Conduct and/or other Authority procedures etc;
- (e) the conduct complained of appears not so serious that it requires a substantive formal sanction such as suspension or disqualification;
- (f) the complaint appears to reveal a lack of guidance, protocols and procedures within the Authority;
- (g) the Subject Member and the Complainant appear amenable to engaging in alternative action, as there is no power to require them to participate;
- (h) allegations and retaliatory allegations from the same Member;
- (i) allegations about how formal meetings are conducted;

- (j) misleading, unclear or misunderstood advice from officers.
32. A decision to take other action means that no conclusion has been reached on the complaint. A referral for other action does not mean that the Subject Member is found to have breached the Code of Conduct. Similarly, the purpose of a referral for other action, is not to establish whether the Subject Member has breached the Code of Conduct.
  33. Any other action proposed, should not imply any wrongdoing. Other action cannot, for example, require an apology from the Subject Member.
  34. The Monitoring Officer may seek the views of the Subject Member on a potential other action direction, when a complaint is first received. Alternatively, the Assessment Sub-committee or Review Sub-committee may, adjourn their meeting, to seek the views of the Subject Member on other action proposals.
  35. The Assessment Sub-committee or Review Sub-committee must consult with the Monitoring Officer before reaching a decision to instruct the Monitoring Officer to take other action. The Monitoring Officer will be in a position to advise the Sub-committees on the viability of any proposed other action e.g. access to facilities or resources needed to accomplish the proposals. The power of direction is to the Monitoring Officer and no one else.
  36. The Monitoring Officer is required to comply with the directions of the Assessment Subcommittee, Review Sub-committee or ESO. The Monitoring Officer has no discretion to take a different course of action and will make every attempt to ensure that the action specified is carried out successfully.
  37. Before adjourning a meeting to consider the views of the Subject Member and/or other Members on whether they will co-operate with a proposal for other action, the Assessment Sub-committee or Review Sub-committee must first consider the advantages or disadvantages of adjournment.

**Advantages of adjournment:**

- the Sub-committee may be aware of the Subject Member's views and may be more confident in making its decision;
- the Subject Member may be likely to co - operate, if consulted;
- keeps open the option of referring for investigation;
- further information obtained by the Monitoring Officer might lead to a 'no action' decision.

**Disadvantages of adjournment:**

- places the decision on what action to take, in the hands of the Subject Member;
- may undermine the Standards Committee and its Sub-committees, if other action is agreed through negotiations between the Monitoring Officer and the Subject Member;
- by making inquiries, the Monitoring Officer may in fact be commencing an investigation;
- the Subject Member may try to convince the Monitoring Officer that 'no action' is appropriate;
- delay to the decision making, which should be made within 20 working days of receipt of the complaint.

## Further information

Meetings may be adjourned by the Assessment Sub-committee or Review Subcommittee, to enable the Monitoring Officer to obtain further information about the complaint.

Within 5 working days of the Assessment Sub-committee's or Review Sub-committee's decision to direct the Monitoring Officer to take other action, or the SFE's direction to 'take other steps', the Monitoring Officer will inform the Subject Member, Complainant, the standards committee of any other authority concerned in writing, of the Sub-committee's decision/SFE's direction and the parties will be required to confirm in writing, that they will co-operate with the process and the Monitoring Officer will outline:

- what is being proposed;
- why it is being proposed;
- why co-operation is essential;
- what the Sub-committee hopes to achieve;
- the time scales.

The following are some examples of other actions, as alternatives to investigation. Other action does not have to be limited to the Subject Member, but may extend to other Members including the whole Authority and is most useful for systemic behaviour within the Authority:

- arranging for the Subject Member to attend a training course;
- arranging for a process of conciliation/mediation (Paragraph 50 of this Procedure);
- arranging for a process of mentoring;
- instituting changes to the Authority's procedures;
- management of conflict;
- development of protocols;
- other steps (not including investigation) to be taken as appear appropriate to the Assessment or Review Sub-committees.

Training may be anything the Assessment Sub-committee or Review Sub-committee deems appropriate, such as:

chairing skills;  
working with external bodies and partnerships;  
governance issues;  
the Code of Conduct;  
Authority procedures and protocols;  
legal matters; planning and licensing;  
working with Officers;  
use of Authority resources.

## Monitoring Officer: Power to refer back to the Assessment or Review Sub-Committees

38. Where a matter has been referred to the Monitoring Officer by the Assessment Sub-Committee or Review Sub-committee for action other than investigation, the Monitoring Officer may refer the matter back to the Sub-Committee:

- (i) if, as a result of new evidence or information, the Monitoring Officer is of the opinion that:
    - the matter is materially more serious or less serious than may have seemed apparent when the Sub-Committee made its decision;
    - the Sub-Committee would not have decided to refer to the Monitoring Officer for action other than investigation, had it been aware of the new evidence or information; or
  - (ii) the Subject Member has died, is seriously ill, or has resigned from the Authority and the Monitoring Officer is of the opinion that, in the circumstances, it is no longer appropriate to continue with the direction to take other action.
39. In forming the opinion to refer back to the Assessment Sub-committee or Review Subcommittee, the Monitoring Officer may take account of:
- (a) the failure of any person to co-operate with the investigation
  - (b) an allegation that the Subject Member has engaged in a further breach of the Code of Conduct;
  - (c) an allegation that another Member has engaged in a related breach of the Code of Conduct.
40. The consideration by the Assessment Sub-committee or Review Sub-committee of a referral back by the Monitoring Officer, will be in closed session

The Assessment Sub-Committee or Review Sub-committee will consider the referral back and may take one of the decisions set out in Paragraph 22 of this Procedure and may also direct that the matter will not be referred back a further time.

### **Monitoring Officer's report**

41. Within 3 months of receipt of the Assessment Sub-committee's or Review Subcommittee's direction to take other action or as soon as reasonably practicable, the Monitoring Officer will report back to the Assessment Sub-committee or Review Subcommittee, detailing the other action taken to comply with the direction or what action is proposed. The access to information rules in respect of local government committees, will apply. The report may be considered by the Members who initially assessed or reviewed the complaint.
- If the Assessment Sub-committee or Review Sub-committee is satisfied with the action taken or proposed (but not yet implemented), the Monitoring Officer will give written notice to:
- (a) the Subject Member;
  - (b) the Complainant;
  - (c) CBC's standards committee (applicable only where the Subject Member is serving both at Borough and County level).

The matter is then closed.

42. If the Assessment Sub-committee or Review Sub-committee is not satisfied with the action taken or proposed (but not yet implemented), the Sub-committee will issue another direction to the Monitoring Officer which requires some kind of other action.

43. The Sub-committee cannot at this stage, decide that the matter should be investigated. If the Sub-committee remains dissatisfied, it may continue to issue up to two further proportionate and reasonable directions.
44. Within 3 months of receipt of the ESO's direction to require the Monitoring Officer to 'take other steps', the Monitoring Officer will submit a written report to the ESO, detailing the other action taken to comply with the direction or what action is proposed.
45. If the ESO is satisfied with the action taken or proposed, the Monitoring Officer will give written notice to the persons referred to above in Paragraph 41 of this Procedure. The matter is then closed.
46. If the ESO is not satisfied with the action specified or proposed, the ESO may require the Monitoring Officer to arrange for a statement to be published in at least one newspaper circulating in the Borough giving:
  - (a) details of the ESO direction;
  - (b) the ESO's reasons for being dissatisfied;
  - (c) the Monitoring Officer's response to the ESO's reasons for dissatisfaction.

#### **Failure to co-operate**

47. Complaints that have been referred to the Monitoring Officer for other action will not be referred back to the Assessment Sub-committee or Review Sub-committee, if the other action is perceived to have failed. The Sub-committee's decision to refer the complaint to the Monitoring Officer for 'other action' closes the opportunity to investigate the complaint.
48. The Subject Member's deliberate and continued failure to co-operate with the Monitoring Officer on another action direction, may amount to conduct bringing the office of councillor into disrepute. The Assessment Sub-committee or Review Sub-committee may take this into account when deciding what action to take, if it is assessing a complaint about a Subject Member who has previously failed to co-operate. In such circumstances, the Sub-committee will not take into account the conduct which led to the original complaint, but only assess the complaint about the failure to co-operate. If the complaint about the failure to co-operate is referred to the Monitoring Officer for investigation, the investigation will focus on the lack of co-operation and not the original complaint that led to the other action direction(s).
49. **When is 'other action' not appropriate?**
  - (a) other action should not be used to avoid investigation of trivial complaints – the correct decision in these cases, will be 'no action';
  - (b) other action should not be seen as a routine response;
  - (c) other action will never be appropriate if the Code of Conduct does not apply to the alleged conduct;
  - (d) an other action decision should not appear to be sweeping matters under the carpet, and must demonstrate to the Complainant, that their complaint is being taken seriously. If an allegation merits investigation, it should be referred for investigation;
  - (e) other action should be avoided, if the allegation fundamentally challenges the Subject Member's honesty or integrity;
  - (f) other action decisions should be avoided where the allegation, if proven, would warrant any sanctions (apart from training);

- (g) complaints should not be referred for other action, when an investigation is in the public interest.

## 50. **MEDIATION AND CONCILIATION**

### **Mediation**

- (a) 'Mediation' is a facilitative process in which disputing parties engage the assistance of an impartial third party, the mediator, who helps them to try to arrive at an agreed resolution of their dispute. The mediator has no authority to make any decisions that are binding on the parties to the dispute and has no power to impose an outcome on disputing parties. The mediator uses certain procedures, techniques and skills to help the parties to negotiate an agreed resolution of their dispute.
- (b) Mediation may be undertaken through indirect mediation, where contact is made initially with each party separately or direct mediation, where a meeting is arranged between those in dispute to draw up a joint action plan.
- (c) The parties, rather than the mediator, decide on the terms of the settlement and it is therefore essential that all parties wish to resolve the dispute. The process is completely voluntary, so a party cannot be forced to take part in mediation and can choose to withdraw from the process at any time although the Monitoring Officer will seek the agreement of the parties that they will co-operate with the mediation process.
- (d) Mediators consciously try to avoid shaping issues, proposals or terms of settlement, or even pushing for the achievement of settlement at all. Instead, they encourage parties in a confidential and informal forum, to define problems and find solutions for themselves and they endorse and support the parties' own efforts to do so.
- (e) The outcome is an agreed compromise, which can step outside the issue in dispute.

### **Why try mediation?**

- is confidential;
- is unbiased;
- is voluntary;
- encourages disputes to settle at an early stage;
- puts the parties in control
- is less stressful than an investigation into a complaint;
- could be cheaper than an investigation into a complaint;
- could resolve the dispute quicker than going through the investigation process
- is less formal than a hearing before the Hearing Sub-committee.

### **When to use mediation**

- (a) personal conflict;
- (b) to salvage, maintain or improve a relationship;
- (c) borderline cases – where the behaviour complained of is too serious to merit 'no further action' and too unimportant to merit a substantial sanction/penalty;

- (d) problems with basic administrative and local governance procedures as well as longstanding personal conflicts and communication problems within the Authority (could result in a combination of mentoring, training and mediation);
- (e) Subject Member developing a history of complaints;
- (f) Subject Member and Complainant need to work together in the future.

#### **When not to use mediation**

- (a) too many people involved;
- (b) serious complaints such as serial bullying or discrimination;
- (c) suspicion of fraud or impropriety;
- (d) failure to register or declare personal interests (unless this is a very small part of
- (e) a bigger interpersonal issue).

#### **Conciliation**

- (a) 'Conciliation' is a procedure like mediation, but the third party, the conciliator, takes a more interventionist role in bringing the parties together and in suggesting possible solutions to help achieve a settlement.
- (b) The difference between conciliation and mediation lies in the fact that the 'conciliator' can make proposals for settlement, 'formulate' or 'reformulate' the terms of a possible settlement while a 'mediator' would not do so but would merely facilitate a settlement between the parties.
- (c) The conciliation outcome will be similar to mediation.

Any conciliation or mediation process will have an agreed timeframe for resolution. The process may be of an informal or formal nature, involving elements of training and mediation that will lead to an effective and fair conclusion of the matter. Any decisions reached regarding future behaviour of the Subject Member and measures to prevent a repetition of the circumstances that gave rise to the initial allegation, should be agreed by all parties.

#### **NO ACTION**

- 51. The Assessment Sub-Committee can decide that no action is required in respect of a complaint and the reasons for this should adhere to the assessment criteria set out in Paragraph 21 above.
- 52. Where no potential breach of the Code of Conduct is disclosed by the complaint, no matter what its source or whoever the subject member, no action can be taken by the Standards Committee in respect of it. The matter of referral for investigation or other action therefore does not arise.

#### **REVIEW SUB-COMMITTEE**

- 53. If the Assessment Sub-Committee decides that no action will be taken on the complaint, the complainant can ask for a review of that decision. The request must be received by the Monitoring Officer in writing within thirty days of the date of the Notice of the Assessment Sub-Committee's decision. The request should state the reasons for the review.
- 54. The Monitoring Officer will then convene a meeting of the Review Sub-Committee which will be held without the public, the complainant and the member the subject of the

complaint present. It will make one of the decisions set out in Paragraph 22.

55. The Review Sub-Committee should aim to complete its review within 20 working days of receipt. A notice of the Review Sub-Committee's decision will be sent to the complainant and to the member the subject of the complaint within five working days.
56. If the Assessment Sub-Committee or the Review Sub-Committee decides that a formal investigation will be carried out, the Monitoring Officer will arrange this.

### **ACCESS TO MEETINGS AND DECISION MAKING**

57. A Sub Committee of the Standards Committee undertaking its role in the assessment or review of a complaint is not subject to the rules regarding notices of meetings, the circulation of agendas and documents, public access to meetings, and the validity of the proceedings
58. Instead, the Assessment or Review Sub-Committee is required to produce a written summary after it has considered a complaint. This must include the main points considered, the conclusions on the complaint and the reasons for the conclusion.
59. The summary may give the name of the member the subject of the complaint unless doing so is not in the public interest or would prejudice any subsequent investigation. Once the written summary has been sent to the member the subject of the complaint it must be made available for the public to inspect at the authority's offices for six years.
60. In limited situations, the Assessment Sub Committee can decide not to give the written summary to the member the subject of the complaint when a referral decision has been made and, if this is the case, arrangements should be put in place which deal with when public inspection will occur. This will usually be when the written summary is given to the member the subject of the complaint during the investigation process.
61. Nevertheless, regard must be had to the requirements under Freedom of Information and Data Protection legislation.

### **MULTIPLE COMPLAINTS FROM DIFFERENT COMPLAINANTS ABOUT THE SAME MATTER**

62. The Council may receive a number of complaints from different complainants about the same matter. In these circumstances, they may be considered by the Assessment Sub-Committee at the same meeting. If so, an officer should be asked to present one report and recommendation that draws together all the relevant information and highlights any substantively different or contradictory information. However, the Assessment Sub-Committee must still reach a decision on each individual complaint and follow the notification procedure for each complaint.

### **VEXATIOUS COMPLAINTS/COMPLAINANTS**

63. Generally, dealing with a complaint is a straightforward process, but in a minority of cases, people pursue their complaints in a way which can either impede the investigation of their complaint or can have significant resource issues for the Authority. This can happen either while their complaint is being investigated, or once the Authority has finished dealing with the complaint.
64. Unfortunately, a small number of people abuse the complaints process and, in the case of persistent complainants, the Monitoring Officer, in consultation with the Chair and Vice Chair of the Standards Committee, will consider whether the Council's policy for persistent complaints should be applied. However, the Standards Committee must

consider every new complaint that they receive in relation to the Code of Conduct. The only circumstances in which a complaint does not need to be considered is where the same complaint by the same person has already been dealt with and the Monitoring Officer does not believe that there is any new evidence.

The following list describes some of the features of a Complainant who may be unreasonably persistent and/or vexatious. The list is not exhaustive, nor does one single feature on its own necessarily imply that the person will be considered as being in this category. The list merely includes examples of the behaviour and actions that the Authority experiences, either individually or in combination. An unreasonably persistent and/or vexatious Complainant may:

1. have insufficient or no grounds for their complaint and be making the complaint only to annoy (or for reasons that he/she does not admit or make obvious);
2. refuse to specify the grounds of a complaint despite offers of assistance;
3. refuse to co-operate with the complaints investigation process while still wishing their complaint to be resolved;
4. refuse to accept that issues are not within the remit of the complaints process despite having been provided with information about the scope of the process;
5. refuse to accept that issues are not within the power of the Council to investigate, change or influence (examples could be a complaint about something that is the responsibility of another organisation);
6. insist on the complaint being dealt with in ways which are incompatible with the complaints process or with good practice (insisting, for instance, that there must not be any written record of the complaint);
7. make what appear to be groundless complaints about the persons dealing with the complaints, and seek to have them dismissed or replaced;
8. make an unreasonable number of contacts with the Council, by any means (telephone, letter, fax, email or in person) in relation to a specific complaint or complaints (it is impracticable to suggest a number in these guidelines, so staff must use their own judgement to determine what an unreasonable number is in any one case);
9. make persistent and unreasonable demands or expectations of staff and/or the complaints process after the unreasonableness has been explained in writing (or in another appropriate form) to the complainant (an example of this could be a complainant who insists on immediate responses to numerous, frequent and/or complex letters, faxes, telephone calls or emails);
10. threaten, harass, verbally abuse, use physical violence and repetitive language of an obsessive nature to intimidate staff and/or Councillors dealing with their complaint and/or their families;
11. raise subsidiary or new issues whilst a complaint is being addressed that were not part of the complaint at the start of the complaints process;
12. introduce trivial or irrelevant new information whilst the complaint is being investigated and expect this to be taken into account and commented on;
13. change the substance or basis of the complaint without reasonable justification whilst the complaint is being addressed;
14. deny statements he/she made at an earlier stage in the complaints process;
15. electronically record meetings and conversations without the prior knowledge and consent of the other person involved;
16. adopt an excessively 'scattergun' approach, for instance, pursuing a complaint or complaints not only with the Council, but at the same time with a Member of

Parliament, other councils, councillors of this and other councils, the Council's external auditor, the police, lawyers and the Local Government Ombudsman;

17. refuse to accept the outcome of the complaints process after its conclusion, repeatedly arguing the point, complaining about the outcome, and/or denying that an adequate response has been given;
  18. make the same complaint repeatedly, perhaps with minor differences, after the complaints process has been concluded and insist that the minor differences make these 'new' complaints which should be put through the full complaints procedure;
  19. persistently approach the Council through different routes about the same issue;
  20. persist in seeking an outcome which the Council has explained is unrealistic for legal or policy (or other valid) reasons;
  21. refuse to accept documented evidence as factual;
  22. complain about or challenge an issue based on a historic and irreversible decision or incident;
  23. refuse to accept documented evidence;
  24. refuse to identify the precise issues which the complainant wishes to have investigated;
  25. refuse to let the matter rest once the complaints process has been exhausted;
  26. displaying unreasonable demands or expectations e.g. insisting on responses to complaints or enquiries being provided more urgently than is reasonable or normal recognised practice;
  27. ulterior motives in lodging a complaint;
  28. combination one or more of these features.
65. Even where restrictions are placed on an individual's contact with the Council, they cannot be prevented from submitting a complaint.

## **RECORDS**

66. Documents that relate to complaints should be kept for six years after the outcome of any result of no further action, or any review or any hearing has been concluded.

## **MEMBERS WITH CONFLICTS OF INTEREST**

67. Assessment Sub-committee members cannot participate in the decision making of the Review Sub-committee. Standards Committee and Sub-committee members should consider not only whether they have a personal and prejudicial interest as set out in the Authority's Code of Conduct, but also, whether their connection to, relationship with or knowledge of the Subject Member could be considered to be biased or give a reasonable member of the public the impression that the decision could be partial.
68. This section of the guidance does not deal with any interests which may arise under the Code of Conduct, which members must also keep in mind and deal with as appropriate.
69. Any member who is a complainant or anyone closely associated with someone who is a complainant, or a potential witness or victim relating to a complaint shall not be involved in the assessment or review process.
70. In certain situations, a Standards Committee member might initially be involved with the initial assessment of a case that is then referred to the Standards Board for England or to the authority's Monitoring Officer. The case might then be referred back to the Standards

Committee to consider again. In such circumstances, the member may continue their involvement in the assessment process.

### **OFFICERS WITH CONFLICTS OF INTEREST**

71. An officer who has previously advised a member the subject of a complaint or who has advised the complainant about the issues giving rise to a complaint should consider whether they can properly take part in the assessment process (i.e. drafting letters, preparing reports, contacting complainants or attending the final hearing of that complaint).
72. If the officer has taken part in supporting the assessment or hearing process, then they should not be involved in the investigation of that matter.
73. The Monitoring Officer should act as the main adviser to the Standards Committee unless the Monitoring Officer has an interest in a matter that would prevent them from performing the role independently. If the Monitoring Officer is unable to take part in the assessment process, their role should be delegated to another appropriate officer of the authority, such as the Deputy Monitoring Officer(s).

### **PERSONAL CONFLICTS**

74. Members and officers should take care to avoid any personal conflicts of interest arising when participating in the consideration of a complaint that a member may have breached the Code of Conduct. The provisions of the Council's Code relating to personal and prejudicial interests apply to Standards Committee members in meetings and hearings. Anyone who has a prejudicial interest or who is involved with a complaint in any way should not take part in the consideration of that complaint. Decisions made in an Assessment or Review Sub-Committee should not be influenced by anything outside the papers and advice put before members in that Sub-Committee. The members should not discuss complaints with others who are not members of the Sub-Committee which deals with the assessment or review. Discussions between members should only take place at official meetings.
75. A member or officer should not take part in the assessment of a complaint because of personal and prejudicial interest in the following circumstances: (not an exhaustive list)
  - The complaint is likely to affect the well-being or financial position of that member or officer or the well-being or financial position of a friend, family member or person with whom they have a close association;
  - The member or officer is directly or indirectly involved in the case in any way;
  - A family member, friend or close associate of the member or officer is involved in the case;
  - The member or officer has an interest in any matter relating to the case. For example, it concerns a member's failure to declare an interest in a planning application in which the member or officer has an interest. This is despite the fact that the outcome of any investigation or other action could not affect the decision reached on the application.

### **COMPLAINTS ABOUT MEMBERS OF MORE THAN ONE AUTHORITY "DUAL HATED SUBJECT MEMBER"**

76. Where a Complaint has been received about a "dual hated" subject Member "dual hated" for this purpose means a borough councillor and a West Sussex County Councillor (WSCC). The Monitoring Officer will check to see if a similar allegation has been received

by the other authority.

77. Decisions on which Standards Committee should deal with a particular complaint must then be taken by the Standards Committees themselves, following discussion with each other. (Having taken advice from the SFE if necessary). This will allow for a co-operative approach, including sharing knowledge and information about Local circumstances and co-operation in carrying out investigations to ensure that resources are used effectively. In these circumstances, a protocol for data sharing with other relevant authorities may need to be considered, should the situation arise.



How to complain about the behaviour of a Councillor

# COMPLAINT FORM – relating to a breach of the Code of Conduct by a Crawley Borough Councillor or a Co-opted Member of the Council

(Please see Note 1 on accompanying Notes)

Please read the accompanying Notes carefully before completing this form

for more information about the complaints process, the decisions the assessment Sub-Committee can reach and the criteria they use to make these decisions please see The Procedure for Dealing with Complaints – Local Assessment

## Your details

**Section 1.** Please provide us with your name and contact details

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	
<b>Address:</b>	
<b>Daytime telephone:</b>	
<b>Evening telephone:</b>	
<b>Mobile telephone:</b>	
<b>Email address:</b>	
<b>Date of Complaint:</b>	<b>Signature:</b>

**Section 2.** Please tell us in which capacity you are making the complaint by ticking the appropriate box below :

- Member of the public
- An elected or co-opted member of an authority
- An independent member of the standards committee
- Member of Parliament
- Local authority monitoring officer
- Other council officer or authority employee
- Other - Please state the capacity in which you are making the complaint

**Details of the complaint**

**Section 3.** Please provide us with the name of the member(s) you believe have breached the Code of Conduct:

Title	First name	Last name

**Section 4.** Please provide us with the details of your complaint (Please see Note 2 on accompanying Notes)

Meetings of the Assessment Sub-Committee are 'closed' which means that you will not be able to attend. It is, therefore, very important that you set your complaint out clearly and provide all the information (including documents or other material) that you want the Sub-Committee to consider.

It is important that you provide all the information you wish to have taken into account by the Assessment Sub-committee when it decides whether or not to take any action on your complaint.

For example:

- You should be specific wherever possible, about exactly what you are alleging the person said or did. For instance, instead of writing that the person insulted you, you should say what it was they said.
- You should provide dates of the alleged incidents wherever possible. If you cannot provide exact dates, it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide names and contact details. If possible you should provide any relevant background information.
- If there has been a time lapse of more than 28 days since the alleged behaviour or conduct, explain why you delayed lodging your complaint.

Continue on a separate sheet(s) if there is not enough space on this form

**Section 5. Only complete this Section if you are requesting that your identity is kept confidential (Please see Note 3 on accompanying Notes)**

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

**Section 6**

Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this complaint.

**Where to send this form**

This form when complete can be sent;

By post to Peter Nicolson  
Chair of the Standards Committee,  
c/o Ann Maria Brown,  
Head of Legal and Democratic Services and  
Monitoring Officer,  
Crawley Borough Council,  
Town Hall, The Boulevard,  
Crawley, West Sussex  
RH10 1UZ

By e mail to [Ann-Maria.Brown@crawley.gov.uk](mailto:Ann-Maria.Brown@crawley.gov.uk)

By fax to 01293 438605

## **Equalities Monitoring**

7. If you are happy to please complete the equalities monitoring questions on the next page. This will be kept confidential and separate from your complaint form. The answers will not be disclosed to the Assessment Sub-Committee or the Member(s) you are complaining about and will be detached from this form before it is submitted. The details you provide will be used by Crawley Borough Council to collect statistics relating to equalities and complaints about Councillors and co-opted member conduct. They may also form part of the statistics supplied to the Standards for England concerning the operation of the complaints process.

## MONITORING INFORMATION

1. My sex is:            Male             Female

2. What is your ethnic group?

Choose one section from (A) to (E) then tick the appropriate box to indicate your cultural background.

**A White**

British

Irish

Any other White background please write in

.....

**B Mixed**

White & Black Caribbean

White & Black African

White & Asian

Any other Mixed background please write in

.....

**C Asian or Asian British**

Indian

Pakistani

Bangladeshi

Any other Asian background please write in

.....

**D Black or Black British**

Black Caribbean

Black African

Any other Black background please write in

.....

**E Chinese or other ethnic group**

Chinese

Any other Ethnic group please write in

.....

3. Do you consider yourself to have a disability?

(For the purpose of this monitoring "disability" is defined as a physical or mental impairment which has a substantial and long term adverse effect on a person's ability to carry out normal day-to-day activities).

YES

NO

4. What is the age group to which you belong?

Under 21  21 - 40  41 - 60  Over 60

Please tell us how you found out to complain about the behaviour of a Councillor:

Crawley Borough Council Web Site

Standards for England Website

Crawley Borough Council Contact Centre

Other place please specify