

Brecon Beacons National Park Authority

Procedures for Dealing with Alleged Breaches of a Local Protocol



20 MAY 2010

Procedures for Dealing with Alleged Breaches of a Local Protocol

Index

	Page No.
1.0 Introduction	2
2.0 Role of Monitoring Officer	2
3.0 Action on receipt of a complaint about a member	3
4.0 Initial considerations	3
5.0 Action when all documentation is available	5
6.0 Action when a decision has been reached	5
Appendix I	
Procedure	7
Stage 1: Making the complaint	7
Stage 2: Informal resolution	7
Stage 3: Hearing before the Standards Committee	7
Other Matters	8

BRECON BEACONS NATIONAL PARK AUTHORITY

Procedures for Dealing with Alleged Breaches of a Local Protocol

1.0 Introduction

- 1.1 Procedures for dealing with alleged breaches of the Authority's local protocols covering Member and officer relations and planning matters are not subject to the enforcement provisions of Part III of the Local Government Act 2000. Hence there is more flexibility available to the Authority on the procedures it may adopt for dealing with allegations of breaches of these protocols. The aim of the procedures is to deal with alleged breaches in the most cost-effective manner, minimising any impact on the Authority's resources, whilst ensuring not only that the process is fair, open and just, but also that the interested parties perceive this to be so.

2.0 Role of the Monitoring Officer

- 2.1 The Monitoring Officer is central to the administration of any response to allegations of breaches of the Authority's protocols, both in terms of utilising resources effectively and ensuring the impartiality of the process.
- 2.2 Monitoring Officers need to be aware of the potential conflicts involved in advising the Standards Committee and advising Members.
- 2.3 It is important that Standards Committees receive high quality, independent advice. The Monitoring Officer should be the main advisor to the Standards Committee, unless he/she has an interest in the matter that would prevent him or her from performing this role independently. If this situation arises, the Monitoring Officer will arrange for the Deputy Monitoring Officer to advise the Standards Committee.
- 2.4 In advising the Standards Committee, the Monitoring Officer or other legal advisor's role is to:
- make sure that members of the Standards Committee understand their powers and procedures;
 - make sure that the determination procedure is fair and will allow the allegation to be dealt with as efficiently and effectively as possible;
 - make sure that the Member about whom the allegation has been made understands the procedures the Standards Committee will follow;
 - provide legal and procedural advice to the Standards Committee during the hearing and the deliberations; and
 - help the Standards Committee produce a written decision and a summary of that decision.

3.0 Action on receipt of a complaint about a member

- 3.1 A complaint that a Member of the Authority has breached any Authority local protocol may be made by another Member, a member of the public or by a member of staff. Such complaints may be directed to a Member of the Authority, or an officer of the Authority. Whichever is the case, the recipient will immediately refer the complaint to the Authority's Monitoring Officer. If the complaint is made by another member of the authority, the procedure set out in Appendix I will apply. Any other complaints will be dealt with under the following procedure.

4.0 Initial considerations

The first sift

- 4.1 The first sift comprises the following steps:
- a) The Monitoring Officer will first refer complaints to the Chief Executive or other senior manager authorised by him, who will assess complaints to identify any which may be vexatious or trivial, or which - on the basis of information provided by the complainant - could not constitute a breach of the protocol. This will preserve the Monitoring Officer's ability to provide legal advice at any subsequent consideration of cases that may be necessary.
 - b) Where a complaint is held to be trivial or vexatious, the complainant will be informed of the decision and the reasons for it.
 - c) If the complaint is dismissed at this initial stage, the Member who was the subject of the complaint will be told about the allegation, but not the identity of the complainant. The Monitoring Officer will keep a record of the complaint and the action and keep the Standards Committee informed.

Evidence of a breach of the Code of Conduct

- 4.2 At the other end of the scale, the Chief Executive may consider that there is prima facie evidence of a breach of the Members' Code of Conduct. In this case, having consulted the Monitoring Officer, the complainant will be advised that the matter falls within the sole jurisdiction of the Public Services Ombudsman for Wales, and that if the complainant wishes to pursue the matter, they should refer it to him.

Protocol breaches

- 4.3 Resolution can be achieved in one of two ways:

Resolution by discussion

- 4.3.1 Where there is no indication of a breach of the Members' Code of Conduct, the Chief Executive will consider whether the situation might be resolved by discussion with or between the complainant (and the complainant's line manager where the complainant is a staff member of the Authority), the Member concerned, the Chief Executive and, where the Chief Executive considers it necessary, the Chairman of the Authority. The Authority Protocol for Member and Officer Relations provides some guidance here. Where this course of action is taken, those concerned will be informed at the earliest opportunity. The Standards Committee will again only be informed in general terms at this stage.

- 4.3.2 In cases where resolution of the matter can be achieved by the above type of discussion the Standards Committee will be informed about the details of the case and any actions arising which are considered necessary to avoid a recurrence of the matter giving rise to the complaint.
- 4.3.3 The Standards Committee will consider, in the light of such cases as occur under this section, any possible need for more general action. For instance, if misunderstandings of what is required under the protocol played a part in the breach, the Monitoring Officer may make proposals to the Standards Committee about the need for clarification of the protocol or additional training for the Member or for Members generally. Alternatively, if the Monitoring Officer considers that the case reveals shortcomings in the Authority's protocols, the Standards Committee will consider what remedial measures to put in place.

Resolution by follow-up

- 4.3.4 Where resolution of the complaint by discussion is not possible, action will need to be taken to ascertain the facts surrounding the complaint and to take appropriate measures to redress the situation where necessary. Such action can be extremely resource intensive. The approach to be adopted will therefore aim to keep the resource demands to the minimum, whilst ensuring that those concerned see the process as fair, open and just.
- 4.3.5 The first step will be for the complainant to be provided with a copy of this paper, as guidance on the form of subsequent procedures. The complainant will then be asked by the Monitoring Officer to provide documentary information and evidence about the complaint within two weeks, including any corroboration by witnesses, and to make the complaint as specific as possible as regards the breach alleged. The Monitoring Officer will make it clear to the complainant that the evidence will be made available to the Member involved for comment, and to the Standards Committee, and that it may end up in the public arena.
- 4.3.6 At this stage, the Monitoring Officer will inform the Standards Committee on a confidential basis, without mention of the names of the parties involved. Committee members will not try to find out more details of the complaint on their own initiative, not least because this would prejudice their position at any subsequent hearing. The Monitoring Officer will also inform the Member concerned that a complaint has been made, and that the complainant has been asked to provide information and evidence which will be copied to the Member when available.
- 4.3.7 On receipt of the complainant's documentation, it will be copied to the Member concerned by the Monitoring Officer as soon as practicable after receipt, together with a copy of this report, so that the Member too knows what to expect as regards the procedures to be followed. The Member will be asked to respond to the complaint in writing within two weeks, and to provide the Monitoring Officer with whatever relevant documentation and evidence, including any available corroboration by witnesses, he or she considers appropriate.
- 4.3.8 If the Member being complained about refuses to cooperate with the Monitoring Officer's request, the Monitoring Officer will have no power to require the necessary cooperation to complete an acceptable response. In these circumstances, the matter will be referred to the Standards Committee for consideration in the light of the evidence provided by the complainant alone.
- 4.3.9 In extreme circumstances, the nature of a refusal to cooperate might constitute a breach of the Code of Conduct for example in relation to the provisions about respect for others

(para 4 of the Code) or as regards bringing the Authority into disrepute (para 6 of the Code). Here, the matter might be referred to the Public Services Ombudsman for Wales, where continued refusal to cooperate with its investigation without reasonable excuse would be an offence.

5.0 Action when all documentation is available

- 5.1 When all the relevant documentation is available, all Standards Committee members will be provided with a copy of the papers collated by the Monitoring Officer, together with advice as appropriate from the Monitoring Officer regarding the complaint. A hearing by the Standards Committee will then be held to consider the information and decide whether the evidence indicates there had been a failure to comply with the protocol. The hearing will take place within two months of the receipt of the parties' information at a time and date suitable for both complainant and the Member concerned. **Wherever possible 14 days notice will be given to the complainant and member concerned. Each will be entitled to be accompanied by a friend or other representative.** The hearing will normally be in public unless the information to be considered meets an exemption under access to information legislation. Wherever possible, the full Committee will participate in the hearing. The minimum number of Committee members to constitute a quorum will be three.
- 5.2 The complainant will first be given the opportunity to present evidence, including any evidence from witnesses, or to have the evidence presented by a representative, provided the representative was not involved in the matter of the complaint. The Member concerned or his/her representative will then be given the opportunity to question the complainant, any of the complainant's witnesses and the complainant's representative, after which the Committee members may put questions to the complainant, any witness and the complainant's representative.
- 5.3 The Member concerned will then be given an opportunity to present evidence including that of witnesses, or to have the evidence presented by a representative, provided the representative was not involved in the matter of the complaint. The complainant (or representative) will then be able to question the Member, any witness for the Member and the other representative concerned, after which the same opportunity will be afforded to Committee members.
- 5.4 Any use of a representative by any party will be at that party's cost. The Committee will not tolerate disruptive behaviour by a representative, witness or any party to the hearing. The Committee will reserve the right to limit the number of witnesses if it considers the number to be unreasonable.
- 5.5 If either of the parties fails to attend the hearing, having previously indicated an intention to attend, the Committee will continue with the hearing unless it is satisfied that there is good reason for the failure to attend. In these circumstances, the hearing may be adjourned.
- 5.6 When all the evidence has been heard, the Committee - together with its legal advisor - will adjourn to consider its findings in private. Having reached a decision, whether unanimously or by majority, the Committee will announce in public its decision, the underlying reasons and any recommendations it intends to make to the Authority.

6.0 Action when a decision has been reached

- 6.1 Where the Standards Committee finds that there has been no breach of the protocol, there may be no need for further action. Nevertheless, the Standards Committee may still consider whether it wishes to make any recommendations to the Authority on matters arising from the complaint

such as clarification of the protocol or additional training generally, or as regards any perceived systemic weakness in the Authority's protocols.

- 6.2 Where the Standards Committee concludes that a breach of the protocol has occurred, it may make recommendations to the Authority for action. In the case of more serious breaches, the Committee may recommend that the Member be censured; the Committee might also recommend training or re-training, or the rectification of any weakness in the Authority's protocols. The Authority might also consider the need for conciliation procedures in some cases.
- 6.3 The Standards Committee will also consider any need for publicity and make appropriate recommendations to the Authority. Where a Member against whom a complaint is made is found not to have breached the protocol, that Member will have the right to require that no publicity should ensue.
- 6.4 The Monitoring Officer will keep a case file of the hearing, including the associated papers and a brief written record of the findings of the Standards Committee, the underlying reasons for the decision and any recommendations made to the Authority.

Complaints against Members by other Members

Complaints against Members by another Member/s will be dealt with under the following three stage procedure.

Procedure

Stage One of the Procedure: Making the complaint

- (i) Any Member who wishes to submit an allegation under this Protocol should send the complaint to the Monitoring Officer. Following receipt of the complaint the Monitoring Officer will advise whether the allegation falls within this Protocol or whether the complainant should consider referral to the Ombudsman as an allegation of breach of the Members' Code of Conduct. The Monitoring Officer may choose not to deal with the allegation at this stage in order to be able to advise the Committee later in the process, in which case the Deputy Monitoring Officer will advise the complainant.
- (ii) If a local resolution is sought under this Protocol then all parties concerned would need to agree not to refer the matter to the Public Services Ombudsman for Wales. If there is a formal referral to the Ombudsman then legislation and regulations set out how the Ombudsman may investigate that matter and if appropriate refer the result of any investigation to the Standards Committee so that the Committee may determine that complaint.
- (iii) If following the first stage the Member wishes to proceed with the allegation under this procedure, the matter may be referred either to an informal resolution under Stage 2 or to a hearing by the Committee under Stage 3.

Stage Two of the Procedure: Informal resolution

At Stage Two, the complaint (if both parties agree) will be referred to the current Member Champion for Member Development (or in his/her absence or if he/she is otherwise unable to act) the Chairman of the NPA to contact the Member against whom the complaint is made to try and resolve the matter informally.

- (i) The Members Champion Training and Development may decline to undertake Stage 2 and with the consent of the Chair of the Committee refer it immediately to Stage Three.
- (ii) If necessary, the Members Champion Training and Development can call on the Monitoring Officer, the Deputy Monitoring Officer or other legal officer for advice and assistance.

Stage Three of the Procedure: Hearing before the Ethics and Standards Committee

- (i) If either party remains dissatisfied with Stage 2, then with the consent of the Chair of the Committee, the third stage of the hearing is before the Standards Committee. The Member making the complaint will be asked to submit the substance of the

complaint in writing, and the Member who is the subject of that complaint will be asked for a written response. These papers, together with any additional written evidence that is submitted by either side will be distributed to the members of the Committee.

- (ii) Both the Member making the complaint and the Member complained against have the right to appear before the Committee and to submit evidence from witnesses. Both will have the right to representation or to have a colleague present. The NPA will not meet the cost of representations.
- (iii) If either side wishes not to be present or fails to attend, the hearing may be held in their absence.
- (iv) After the evidence has been heard, both sides and their representatives will be asked to leave the Chamber and the Committee will come to a conclusion on the allegation. The Monitoring Officer or his/her representative will be available to advise the Committee.
- (v) The Committee can come to one of three conclusions, namely:-
 - (a) That there is no basis to the complaint.
 - (b) That there is a basis to the complaint but that no further action is required.
 - (c) That there is a basis to the Complaint and that the Member should be censured.

The conclusion by the Committee will be reported to the NPA. In addition, the Committee can make recommendations to the NPA regarding changes to any procedures or taking any further action.

Other Matters

- (i) Publicity will not be given to the names of the Members involved unless it is decided to uphold the complaint and that the Member should be censured. The hearing before the Committee will be exempt.
- (ii) Stages Two and Three do not have to be followed sequentially. Although it is possible for a Member who remains dissatisfied after the intervention of the Members Champion Training and Development to ask for the matter to be referred to a hearing before the Committee, it is also possible for a matter to proceed directly to the Committee without being first submitted to the Members Champion Training and Development, provided the Chair of the Ethics and Standards Committee agrees.
- (iii) The aim of this Procedure is to try and resolve complaints regarding Members quickly and effectively. Nothing in this procedure prevents an officer or Member from submitting a complaint to the Ombudsman that a Member has breached the Members' Code of Conduct at any time before Stages Two (in the case of a Member) or Three (in the case of either an officer or a Member) of the Procedure is engaged.

This Protocol is not designed for use by Members of the Public. If there is a complaint by a member of the public against officer conduct or Member conduct, then that should follow normal

processes, either through the Authority's complaints process in respect of an officer or to the Monitoring Officer and/or the Ombudsman in respect of a Member.